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The American Bar Association Journal

ISSUED QUARTERLY

BY THE AMERICAN BAR ASSOCIATION

CONTENTS

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Letters as to other business relating to the JOURNAL should be addressed to the office of publication; those as to the Bureau of Comparative Law to Robert P. Shick, 1107 Liberty Building, Philadelphia, Pa.; and those as to the general plan and literary contents of the JOURNAL to the Chairman of the Committee on publications, Carroll T. Bond, Baltimore, Md.

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ARRANGEMENT OF RESPECTIVE SUB-TITLES UNDER HEADINGS C AND D IN TABLE OF CONTENTS ON COVER PAGE

Statement of the Ownership, Management, Circulation, Etc., required by the Act of Congress of August 24, 1912,

of THE AMERICAN BAR ASSOCIATION JOURNAL, published quarterly at Baltimore, Maryland, for April 1st, 1919.

STATE OF MARYLAND, BALTIMORE CITY, *SS.*

Before me, a Notary Public in and for the State and City aforesaid, personally appeared George Whitelock, who, having been duly sworn according to law, deposes and says that he is the managing editor of the American Bar Association Journal and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management, etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 443, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:

Publisher, THE AMERICAN BAR ASSOCIATION, Baltimore, Md.
Editor, Hon. Carroll T. Bond, Court House, Baltimore, Md.
Managing Editor, George Whitelock, Secretary, 1416 Munsey Bldg., Baltimore, Md.
Business Managers, Executive Committee American Bar Association, as follows:

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Peoria, Ill.

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THE AMERICAN BAR ASSOCIATION

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent. or more of total amount of bonds, mortgages, or other securities are: (If there are none, so state).

NONE.

GEORGE WHITELOCK, *Managing Editor.*

Sworn to and subscribed before me this 20th day of March, 1919.

[SEAL]

NELLIE A. DAVIDSON, *Notary Public.*
(My commission expires May 4th, 1920.)

The American Bar Association Journal

VOL. V APRIL, 1919 No. 2

I.

SPECIAL ANNOUNCEMENTS.

ANNUAL MEETING.

The annual meeting of the American Bar Association will be held at **New London, Connecticut,** on Wednesday, Thursday and Friday, September 3, 4, 5, 1919.

Headquarters will be at The Griswold, Eastern Point, where the offices of the Secretary and Treasurer will be located in the hotel. They will be open for registration of members and delegates, and for sale of dinner tickets on Monday morning, September 1, at 10 o'clock.

All meetings of the Association and of the Sections, Committees and allied bodies will be held in The Griswold.

FIRST SESSION: WEDNESDAY, SEPTEMBER 3, 10 A. M.

Address of welcome by Hon. Frank B. Brandegee, of Connecticut.

George T. Page, of Illinois, President of the Association, will deliver the President's address.

SECOND SESSION: WEDNESDAY, SEPTEMBER 3, 8 P. M.

Address by Dr. David Jayne Hill, of New York.

RECEPTION.

A reception will be given to the President and members and guests of the American Bar Association and ladies accompanying them at 9.30 P. M. in the Assembly Room.

THIRD SESSION: THURSDAY, SEPTEMBER 4, 10 A. M.

The reports of standing and special committees will be presented and discussed. They will be printed in the July number of the JOURNAL.

EXCURSION.

There will be an afternoon excursion for members and guests of the Association and ladies accompanying them.

FOURTH SESSION: THURSDAY, SEPTEMBER 4, 8 P. M.

Address.

Submission of Draft of Revised Constitution of the Association.

FIFTH SESSION: FRIDAY, SEPTEMBER 5, 10 A. M.

Address:

"Power of Congress to Tax State Securities under Sixteenth Amendment," Albert C. Ritchie, of Maryland.

SIXTH SESSION: FRIDAY, SEPTEMBER 5, 2.30 P. M.

Unfinished business.

Address.

ANNUAL DINNER.

The annual dinner of the Association will be given at The Griswold, on Friday, September 5, 7 P. M.

EXECUTIVE COMMITTEE AND GENERAL COUNCIL.

The Executive Committee of the Association will meet in Room E on Tuesday, September 2, 8 P. M.

The General Council of the Association will meet in Room N.

The first meeting of the Council will be held on Wednesday, September 3, 9 A. M.

SECTIONS, ALLIED BODIES, ETC.

The National Conference of Commissioners on Uniform State Laws will convene on Thursday, August 28, 11 A. M.

The sessions of the Conference will continue on Friday, Saturday, Monday and Tuesday, August 29, 30, September 1 and 2.

The Executive Committee of the Conference will meet on Thursday, August 28, 10 A. M.

The Conference of Delegates from Bar Associations will meet on Tuesday, September 2. There will be three sessions of the Conference, 10 A. M., 2 P. M. and 8 P. M., respectively.

The sessions will be held in the Assembly Room.

It is the purpose of the Committee in charge of the program for this Conference to invite thereto three delegates from each State Bar Association and two delegates from each Local Bar Association. The full program will be printed in the July JOURNAL.

The Section of Legal Education will hold its session in Room N on Wednesday, September 3, 3 P. M.

The Comparative Law Bureau will hold its session in Room E on Wednesday, September 3, 2.30 P. M.

The American Institute of Criminal Law and Criminology will hold two sessions on Tuesday, September 2, 2.30 and 8 P. M., and one session on Wednesday, September 3, 3 P. M. The sessions will be held in the Tea Room.

The Section of Public Utility Law will hold three sessions in the Card Room on Tuesday, September 2, 10 A. M., 2 P. M. and 8 P. M.

The Judicial Section will hold its session in the Assembly Room on Wednesday, September 3, 2 P. M.

The Section of Patent, Trade-Mark and Copyright Law will meet in the Card Room on Wednesday, September 3, 3 P. M.

CHRONOLOGICAL RÉSUMÉ.

AUGUST.

THURSDAY, 28TH.

10.00 A. M. Executive Committee of the National Conference of Commissioners on Uniform State Laws.

THURSDAY, 28TH, TO TUESDAY, SEPTEMBER 2, BOTH INCLUSIVE. National Conference of Commissioners on Uniform State Laws.

SEPTEMBER.

TUESDAY, 2D.

10.00 A. M. Conference of delegates from American Bar Association and from State and Local Bar Associations.
10.00 A. M. Closing Session of National Conference of Commissioners on Uniform State Laws.
10.00 A. M. Section of Public Utility Law.
2.00 P. M. Conference of Bar Association Delegates.
2.00 P. M. Section of Public Utility Law.
2.30 P. M. American Institute of Criminal Law and Criminology.
8.00 P. M. Conference of Bar Association Delegates.
8.00 P. M. Section of Public Utility Law.
8.00 P. M. American Institute of Criminal Law and Criminology.
8.00 P. M. Executive Committee of the Association.

WEDNESDAY, 3D.

9.00 A. M. General Council of the Association.
10.00 A. M. First session American Bar Association.
Address of welcome, Hon. Frank B. Brandegee.
President's address, George T. Page.
2.00 P. M. Judicial Section.
2.30 P. M. Comparative Law Bureau.
3.00 P. M. Section of Legal Education.
3.00 P. M. Section of Patent, Trade-Mark and Copyright Law.
3.00 P. M. American Institute of Criminal Law and Criminology.
8.00 P. M. Second session American Bar Association.
Address by Dr. David Jayne Hill.
9.30 P. M. Reception to members and guests.

THURSDAY, 4TH.

10.00 A. M. Third session American Bar Association. Presentation of reports of committees.
2.00 P. M. Excursion.

8.00 P. M. Fourth session American Bar Association.
Address.
Submission of draft of Revised Constitution of the Association.

FRIDAY, 5TH.

10.00 A. M. Fifth session American Bar Association.
Address by Albert C. Ritchie.
Unfinished business.

2.30 P. M. Sixth session American Bar Association.
Address.
Unfinished business.

7.00 P. M. Annual dinner American Bar Association.

HOTEL RESERVATIONS.

C. L. Avery, of New London, has kindly consented to take charge of the reservations for members and delegates. In writing to Mr. Avery, please state preference of hotels, time of arrival, period for which the rooms are desired, whether with or without bath, and how many persons will occupy each room.

A list of available hotels will be found on advertising page II in the front of this JOURNAL.

SPECIAL NOTICE TO CHAIRMEN OF COMMITTEES.

All printed reports of committees of the American Bar Association for presentation at the annual meeting will be published in the July number of the JOURNAL, and such reports will *not* be printed and distributed to members in separate pamphlet form. The Secretary should receive reports from the respective committees in final form not later than June 10, 1919. *Chairmen of committees are requested to bear this notice in mind.*

Rooms at The Griswold are available for purposes of committee meetings, and will be assigned on application of Chairmen to the Secretary.

GEORGE WHITELOCK, *Secretary,*
1416 Munsey Bldg., Baltimore, Md.

II.
GENERAL ANNOUNCEMENTS.

President George T. Page having been appointed a Circuit Judge for the Seventh Federal Circuit, qualified before the Circuit Court of Appeals at Chicago on March 27, 1919, the full Bench being present.

Albert Le Grand, the Paris lawyer who attended the Milwaukee meeting of the Association, has served several years as an officer in the French Army. He is now in the War Office. He writes: "The Croix de Guerre, the Légion d'Honneur, 23 bits of iron in my body, and the loss of part of my property in the North, is what I got out of the war. Anyhow I am glad to have been in it."

President Page, acting under authority of a resolution of the Executive Committee, has appointed a Special Committee to investigate the status of the present military law relating to courts-martial, with instructions to report to the Executive Committee.

The members of the Special Committee are:

S. S. Gregory, Chicago, Ill.
Wm. P. Bynum, Greensboro, N. C.
Martin Conboy, New York, N. Y.
Andrew A. Bruce, Minneapolis, Minn.
John Hinkley, Baltimore, Md.

MEETINGS OF STATE BAR ASSOCIATIONS IN 1919.

Mississippi State Bar Association, April 30, Clarksdale.

Louisiana Bar Association, May 16, 17, Baton Rouge.

Illinois State Bar Association, May 28, 29, Decatur.

State Bar Association of Arkansas, May 29, 30, Little Rock.

Georgia Bar Association, May 30, 31, Tybee Island (joint meeting with South Carolina Bar).

South Carolina Bar Association, May 30, 31, Tybee Island, Georgia (joint meeting with Georgia Bar).

New Jersey State Bar Association, June 13, 14, Hotel Chelsea, Atlantic City.

Maryland State Bar Association, June 26, 27, 28, Hotel Chelsea, Atlantic City, N. J.

Minnesota State Bar Association, July 1, 2, 3, La Crosse, Wisconsin (joint meeting with Wisconsin Bar).

State Bar Association of Wisconsin, July 1, 2, 3, La Crosse, (joint meeting with Minnesota Bar).

North Carolina Bar Association, August 12, 13, 14, Greensboro.

BOOKS RECEIVED.

Acknowledgment is made of the receipt by the Secretary of the following books:

Transactions of the Twenty-First Annual Meeting (1918) of the Colorado Bar Association.

Proceedings of the Nevada Bar Association, 1917.

Report of the 39th Annual Meeting of the Ohio State Bar Association, 1918.

Second Report of the Provost Marshal General to the Secretary of War on the Operations of the Selective Service System.

Proceedings of the Illinois State Bar Association, 1918.

Proceedings of the State Bar Association of Arkansas, 1918.

Year Book of the New Jersey State Bar Association, 1918-1919.

Proceedings of the Bar Association of Tennessee, 1918.

III.

REPORT OF THE SPECIAL COMMITTEE FOR WAR SERVICE OF THE AMERICAN BAR ASSOCIATION.

The committee began its work in Washington early in January, 1918 (after receiving a letter from President Wilson dated December 31, 1917, in which he wrote that the "work should be done in consultation and close cooperation with the Secretary of Labor," as the Department of Labor "was doing the same work upon a broader scale because including others besides the legal profession").

The committee was started in the first instance as a legal clearing house where lawyers wishing to help the government could either call or register their qualifications on cards prepared by the committee and to which the various departments, bureaus and commissions of the government who desired lawyers could apply. As the committee was in a sense an employment bureau for lawyers and because of the letter from President Wilson, it resulted naturally that the committee should be given offices in the building of the United States Employment Service of the Department of Labor.

The committee was organized by the personal selection of lawyers in every state in the Union to act as its advisors; by a list of all the legal advisory boards in the country, more than 4500 in number; by the names and addresses of the presidents and secretaries and so far as possible of the names of the members of the 700 and odd bar associations of the country; and it later obtained the names of one or more accredited lawyers in almost every county in the Union. In addition to these lists the committee obtained the lists of the lawyers of the Employers' Liability Assurance Corporation; the guaranteed attorneys list of the United States Fidelity and Guaranty Co., the Russell Law List and Martindale and Hubbell's Legal Directories.

Besides the work of placing lawyers there later developed a large amount of work which the committee was able to do in assisting the various departments, bureaus and commissions engaged in war work.

Because of the order in which the work of the committee was undertaken and also for the sake of clearness in describing the

work it has seemed best to the committee to divide its work as follows:

First. The work of the committee as a Legal Clearing House.

(a) The work of placing lawyers in Washington.

(b) The work of placing lawyers elsewhere in the United States.

(c) The work of lawyers overseas.

Second. The cooperation in war work with the various departments, bureaus and commissions.

Third. The work of the committee requiring special mention, and

Fourth. The work done by the committee as suggested by President Wilson in consultation and close cooperation with the Secretary of Labor.

First. From the list of almost 4000 lawyers who offered their services to the government upon such terms as they could afford; from the members of the American Bar Association and from other lawyers carefully selected throughout the country, we supplied lawyers to do much of the war work required by the government.

(a) To the State Department in Washington we furnished the names of several lawyers for international law work and for other general work in that department. To the attorney-general we supplied a lawyer to work on the status of interned alien enemies which work will be referred to later. To the Internal Revenue Branch of the Treasury Department we supplied lawyers for income tax and other work and also many lawyers to the War Risk Insurance Bureau. The work which we did for this bureau will be described later on in this report. To the Department of Labor we supplied lawyers for the Public Service Reserve and the United States Housing Corporation. To the War Department we supplied lawyers for several of its branches, including the Military Intelligence Branch and the Quartermaster's and Ordnance Corps. To the Department of Agriculture we supplied several lawyers. We had been in consultation with the Post-Master General's office on the question of lawyers for telephone and telegraph work and were preparing to enlist the services of lawyers for the Department of the Interior at the time the armistice was signed. We also supplied lawyers to the Food

Administration, Fuel Administration, U. S. Shipping Board, Emergency Fleet Corporation, Council of National Defense, War Trade Board, Alien Property Custodian and American Red Cross.

(b) For work in other parts of the country outside of Washington we supplied to the War Risk Insurance Bureau at least one lawyer in almost every county in the Union, more than 3000 in all. To the Department of Justice we furnished the names of lawyers in every state to assist the district attorneys in cases of necessity. To the Military Intelligence Branch of the War Department we furnished the names of approximately 500 lawyers in cities and towns chiefly through the middle west. For the Department of Labor we selected lawyers duly qualified to assist the Housing Corporation of that department with its projects throughout the country. To the Committee of Training Camp Activities we supplied lawyers responsible for proper conditions and the enforcement of law in the neighborhood of camps, and to the War Camp Community Service more than 150 lawyers for voluntary work at local stations. In assisting the director of field work in the United States Employment Service the committee supplied about one-half the organizers, and to the War Industries Board we furnished the names of lawyers of prominence for special work.

The work done by lawyers outside of Washington was almost entirely volunteer work.

(c) For overseas work, besides referring lawyers to the Judge-Advocate General's office (which office usually made its own selections), we supplied several lawyers to work on adjusting claims in France. These men spoke French and had some insurance experience. We supplied lawyers to the State Department for consular service. To the Military Intelligence Bureau, lawyers for interpreting and other work who spoke respectively Russian, Czecho-Slovak, Japanese, Rumanian, Norwegian, Swedish, Danish and Dutch. Several lawyers were supplied to the Motor Transport Co. and to the Field Artillery Service. At the time of the signing of the armistice the names of 50 lawyers of administrative and prosecuting experience had been furnished to the General Staff for military police duty in France, and also the names of 40 men selected for domestic and overseas work for the military and intelligence service to whom commissions were

being issued at the time hostilities ceased. We also supplied from time to time lawyers for work overseas for the American Red Cross and for the Y. M. C. A.

Second. Owing to the very large number of departments, bureaus and commissions engaged in war work, especially in the War Department, it was extremely important (in order that the committee should be able to supply as far as possible the need for lawyers) that that department should have a personnel section to whom the committee could refer. The committee was largely instrumental in bringing about such a section.

In several important instances we have prevented duplication of effort by getting together men in the different departments who were unconsciously working on similar work, independently of each other—notably in the case of the Judge-Advocate General's office and the Council of National Defense, in the organization of local boards throughout the country, and in the case of the War Service Exchange and the United States Employment Service in securing recruits for the army. We worked with the Attorney-General's office in the attempted coordination of the various law departments so as to avoid the repetition of an examination of identically the same question and so as to render uniform the opinions thereon.

With the Secretary of the Navy in calling to the attention of the legal advisory boards the Soldiers' and Sailors' Civil Relief Act. Through these boards we received the cordial assistance of the lawyers throughout the country in carrying out the provisions of the act.

The Alien Property Custodian conceived the idea of getting all the lawyers of the country (approximately 150,000 in number) to assist him in uncovering such German owned property as, according to the usages of war, should be taken over by the government; and he also wrote for the same purpose to all the probate and other judges having jurisdiction of estates. At his request the committee cooperated with him in enlisting the services of lawyers through the presidents of all the bar associations. The Alien Property Custodian also asked the committee to furnish him competent lawyers to represent him in court in the various counties in New York state; and from time to time

we supplied him with lawyers for special service in cities and towns throughout the country.

Third. Soon after the committee entered upon its work in Washington it learned that claims agents and pension attorneys were inducing beneficiaries of war risk insurance to place in their hands claims against the government on a percentage basis and at exorbitant rates. In most instances it was entirely unnecessary to employ lawyers; and many times the claims were obtained through misrepresentation. The committee also learned that Congress, knowing of this situation, was proposing to restrict the fees of agents and attorneys and that Congressman Treadway of Massachusetts was working on a bill to effect this purpose. We discovered that the Bureau of War Risk Insurance was unaware both of the practices of these claims agents and attorneys and also of the proposed bill. The committee arranged for a conference between Congressman Treadway and the Law Department of the Bureau of War Risk Insurance and assisted in the drafting of the bill which afterwards became a law. It was evident that in order to render effectual the purpose of the bill we must obtain the gratuitous assistance of the lawyers of the country. To accomplish this purpose we worked with the Secretary of the Treasury and with him sent out to all the legal advisory boards, approximately 4500 in number, a letter from the Secretary of the Treasury and the chairman of the committee, and thereby obtained the voluntary services of a large proportion of the Bar of the country, who, in addition to the work they had done for about 9,000,000 registrants in working out their questionnaires, had also helped the enlisted men in various ways with the aid of the home sections of the Red Cross and the committees of the State Councils of Defense. The result of this work will be to get for the soldiers and sailors substantially the full amount of the money due them on their war risk insurance.

The War Department has relied on the committee to handle the correspondence of the soldiers, sailors and their dependents in cases where their rights were assailed in violation of the Soldiers' and Sailors' Civil Relief Act. Letters have been constantly received from the wives of the enlisted men and others, usually addressed to the President of the United States or to the Secretary of War, asking for help either where their property was about to

be seized under foreclosure proceedings, or other acts were attempted to be done contrary to the provisions of the act. These letters were immediately referred to the committee and we have been able through the machinery of the office to make a speedy and satisfactory selection of lawyers who have rendered gratuitous service in every instance. The Judge-Advocate and Adjutant-General's office have frequently called upon the committee in like cases for a lawyer in some city, town or hamlet of the country, to assist the enlisted men or their families and we have always been able to furnish them a lawyer within 24 hours of the time the application was made.

It has seemed best to the committee to make special reference to its work in regard to alien enemies. The problem was first presented to us upon application from the Department of Justice for an attorney to investigate the situation at Hot Springs, N. C., where many German sailors were living, placed there from the interned ships. Upon the United States Government devolved the duty of feeding these men. Many of them had families in the United States who were subject to public charity as a result of their internment, and they were also a source of anxiety to the surrounding country. The Department of Justice desired to utilize the services of these men so far as it could safely be done, upon work of a productive nature. To accomplish this purpose an attorney was selected by the committee for the Department of Justice who, in consultation with the committee, began an investigation of conditions at Hot Springs. A questionnaire was framed and distributed among the men at camp, and through their answers evidence was obtained which enabled the Department of Justice to determine what men were eligible for parole. The committee worked as an intermediary between the Department of Justice and the Department of Labor which had joint jurisdiction of the situation, with the result that a considerable number of men were sent to work in industrial departments and upon farms. It was later called to the attention of the committee that friendly enemy aliens were not allowed to pass through certain barred zones. By arrangements with the Department of Justice the United States marshals were instructed to permit the transport of these men through the barred zones in such a way as to greatly

increase their working capacity and thereby to materially contribute to the national food supply. The lawyer whom we selected for the Department of Justice is still at work on questions relating to enemy aliens and will undoubtedly continue his work until the questions are disposed of.

Fourth. Because of our close association with the Department of Labor we have been able to carry out the wishes of President Wilson and to cooperate with that department in various ways. Among others we succeeded in improving the relationship between that department and the other departments of the government. We also assisted the United States Employment Service in field organization of labor through the community labor boards by supplying to them about half of their organizers, and also the Boys' Working Reserve of the United States Employment Service with a list of organizers in their field.

Early in the spring the director of the Bureau of Farm Labor of the Department of Labor called upon the committee to assist in connection with the crop shortage. The problem was to increase the number of agricultural workers. Even before the war there was a deficiency in farm labor which was considerably increased by conscription into the army, and by the inducements offered to farm hands by occupations paying higher wages. There were also a large number of men who were either idle or engaged in useless or unnecessary occupations. The remedy for these conditions appeared to be through some form of compulsory legislation which would require all persons to engage in some useful pursuit. The committee learned that the national committee on prisons and prison labor was already working with the provost marshal to frame a uniform, compulsory work law. The secretary of the committee attended conferences at which the Maryland Anti-Loafing Law was used as a basis for the proposed uniform law. It was suggested at these conferences that the American Bar Association should transmit to the state commissions on uniform laws a draft of their proposed law and that the commissioners should procure a passage of such a law through their legislatures at the earliest moment. At the outset it was feared by some of the leading men of the Department of Labor that such a compulsory work law might be used unfairly against the laboring man and would tend to lower the standard of living

and wages. After interviews with the Secretary of Labor and the War Labor Policies Board, amendments to the proposed law were suggested acceptable both to the conference and to the Department of Labor, thus removing the chief obstacles to the passage of such legislation.

When the question was taken up with the commissioners on uniform laws, the committee learned that Judge Stockbridge of Maryland, representing the commissioners, was working on a similar law. It was therefore necessary to have a meeting on the final draft of the law at which all persons interested, including representatives of the Council of National Defense, were present. The draft of the bill as finally agreed upon was approved at a meeting of the commissioners on uniform laws held the week preceding the annual meeting of the American Bar Association.

The question of compulsory work legislation was again brought to the attention of the committee by the director of the Bureau of Farm Labor in connection with crop harvesting in the south. The result of the increased income received by colored women through the allotments and allowances of enlisted men was said to interfere seriously with the work of harvesting, especially of cotton, which in the south depends largely upon colored female labor. It was suggested by the director that the compulsory work law be extended to *all* persons. After talking with the representatives of the previous conference; with women familiar with labor conditions throughout the country; with the professor of negro economics of the Department of Labor; with the solicitor and assistant secretary of the department and with several well-known and well-informed southerners, the committee advised against the inclusion of women in the compulsory work law, experience having demonstrated that any such provision would be enforced against colored but not against white women. To relieve the existing situation the committee offered its services to Dr. Haynes, professor of negro economics, who was already engaged in the work of cooperation between the whites and blacks in certain of the southern states.

Our work with the War Service Exchange and with the Public Reserve of the Department of Labor disclosed duplication of effort between the two departments. This was due in part to

misunderstandings between the heads of the departments which the committee helped to remove by bringing them together on the occasion of the drive by the general staff for a large number of limited service men for commissioned officers. It was learned that the General Staff proposed to secure these men through its own machinery to be built up regardless of the existing machinery of the Department of Labor. Discussion with the leading men at the War Service Exchange and the Committee on Classification of Personnel, resulted in a conference with the persons in charge of the U. S. Employment Service and the Public Service Reserve, at which it was finally agreed that a certain proportion of the men desired by the General Staff should be secured by the Department of Labor. This work was immediately undertaken by the Department of Labor and the responsibility for its success was placed on this committee. At the time of the signing of the armistice the work was well under way and the War Service Exchange informed the committee that the results already obtained justified the belief that the plan would have been a complete success. The reverse process is now taking place. The Department of Labor has been called upon to put the soldiers back into industry. The partial success which it had achieved in the drive above referred to has made it easier to secure the good will and cooperation of the War Department. The committee has again been asked to help the Department of Labor in working out a professional section to have special charge of placing lawyers, engineers and other educated men who are handicapped by wounds or otherwise disabled. The secretary of the committee is now working with the Department of Labor in cooperation with the Bureau of Education upon this plan.

In conclusion, it is interesting to note that the first important work done by the committee in Washington was in connection with the activities of pension attorneys and claims agents, and that it is now engaged for its last work in getting the Secretary of the Treasury to combine with the committee in calling the attention of the entire Bar of the country to the renewed activities of these attorneys and agents, and with the assistance of all the lawyers again to thwart the endeavors of these men.

JOHN LOWELL, *Chairman.*

IV.

CONTRIBUTIONS OF COMPARATIVE LAW BUREAU.

A. GENERAL JURISPRUDENCE. INTERNATIONAL PRIVATE LAW.

The last international Congress before the war, which was of an official character, was held in January, 1914. This was convened to promote the safety of life at sea, and a convention for that purpose was agreed to *ad referendum* by 14 powers, but the war prevented its ratification. The first important international conference since the war was that of the International Seafarers' Conference, held in February, 1919, at London. Representatives attended on the opening day from eight nations. Dutch delegates had been appointed, but declined to attend on the ground that Germany and Austria-Hungary could not participate.

The twentieth International Congress of Americanists will be held in Rio Janeiro on June 18, 1919.

The publication in 1918 of Mr. Root's full argument in behalf of the United States, in the North Atlantic Coast Fisheries Arbitration case, recalls the central point on which our case turned, and marks the tendency of constructive jurisprudence to look at the reason of things as the real foundation of law.

Newfoundland promulgated in 1905 certain regulations affecting unfavorably rights of fishery claimed in her waters by the United States. The United States protested and the matter was submitted to arbitration. The question presented by the papers was whether Canada and Newfoundland could enact reasonable regulations of this nature without notice to or consent of the United States. Great Britain did not claim, in argument, that unreasonable regulations could be so made. The United States urged that her citizens had treaty rights in the fisheries which were a limitation on the sovereignty of Great Britain, but that, be this as it may, no regulations could be made without due notice and opportunity to be heard.

The arbitrators rejected the contention as to a limited sovereignty. As to the kind of regulations that could be imposed by Canada and Newfoundland, however, they held that they must be reasonable, and if not agreed to by the United States should be submitted to arbitration. The award prescribed a mode of procedure as to such regulations, following this view. Under this, which has been in substance accepted by the United States and Great Britain, no fishery regulations can be enforced against American citizens, until they have been published in such manner as to give the United States full opportunity to object to them on the ground of their being unreasonable; the hearing to be before an impartial body of experts.

It will be perceived that this award is quite in line with the doctrine of the Supreme Court of the United States, as finally formulated on the subject of restraints of interstate commerce. Mr. Justice Brewer in his concurring opinion in the Northern Securities Co. *vs.* United States (193 U. S. 361) laid the foundation for it, in holding that as the Anti-Trust Act was by its title levelled only at "unlawful restraints," only those contracts and combinations were invalidated by it which were "in direct restraint of trade, unreasonable, and against public policy." Upon this basis, Chief Justice White, in 1910, set up his "rule of reason" as a predominating force in the construction of statutes.[1]

S. E. B.

B. SPECIAL ARTICLES.

THE INTERNATIONAL MIXED COURT OF SHANGHAI.

THE KEY TO JUDICIAL REFORM IN CHINA.

By Charles Sumner Lobingier,

Judge of the United States Court for China.

One of the institutions which first attracted my attention on beginning my judicial service in China was the Mixed Court of Shanghai which tries all cases, criminal or civil, arising in that city of over a million inhabitants, which involve a Chinese defendant. Certain features of its organization and administration

[1] Standard Oil Co. *vs.* U. S., 221 U. S. 66.

seemed to me to demand the attention of the head of an American court in China, one of whose avowed purposes was to assist the Chinese in developing a judicial system of their own. Indeed it seemed a pity that the experience of the foreign judges should not be utilized toward such an end.

At the time I found very little encouragement. Recent events, however, both local and general, have drawn public attention to this unique tribunal and have brought it prominently into the foreground in connection with widespread discussions of the need of legal and judicial reform in China.

ITS IMPORTANCE.

Heretofore while the uniqueness of the Mixed Court has excited curiosity, its importance has not been so generally recognized. Mr. T. R. Jernigan, formerly American Consul-General at Shanghai and now the Dean of the American Bar in China, in a paper read several years ago before the Far Eastern Bar Association, said:

"There is no court in the Settlement, or in China, as important to foreign interest as the Mixed Court, and no evidence is necessary in support of the statement, for one has only to look around to see the large number of native merchants buying from and selling to foreign merchants, and to bear in mind that no contract can be enforced against a native merchant except by an action commenced in the Mixed Court, and that there is no other agency by which a native delinquent debtor can be made to comply with his obligations save through the aid of that court. . . . .

"It ought to be clear, that when commercial transactions are daily taking place between the foreigner and native, or between native and native, there arises a mutually dependent interest as to give to the judgment of any court in the settlement a far more reaching consequence than on its face would appear.

"What I wish to give particular emphasis is, that although the judgment creditor of the Mixed Court may be a native, it sometimes happens that such creditor is indebted to a foreigner, and the judgment in his favor is frequently the most convenient asset available to pay the debt due the foreign creditor."

Mr. H. D. Rodger, a member of the Bar of the United States Court for China, but who appears frequently in the court which furnishes the subject of this article, writes:

"The International Mixed Court does more business than any other court in the world: last year over 68,000 cases were tried.

Over 200 capital cases and hundreds of cases in the civil courts where the amount involved is over $10,000."

Surely a tribunal of such importance and whose judgments may vitally affect the welfare of anyone of nearly, if not quite, a million people, is deserving of rather more attention than it has yet received either at home or abroad.

ORIGIN AND HISTORY.

The Mixed Court has now been in continuous existence for 55 years and some episodes in its history have been striking and even sensational. An article which appeared in one of the local newspapers[1] at the time of the semi-centennial is devoted primarily to the beginnings of the court.

"In the early days of the Settlement, when the community was small," it is said, "there were few disputes between foreigners and Chinese necessitating legal proceedings, and in the cases occurring from time to time, the consuls watched the proceedings in the interests of the foreign community. Purely Chinese cases were left entirely to the native courts. The growth of the foreign community, and consequent increase in the number of cases in which its interests were involved, necessitated a change from this rough and ready system. The more important cases were dealt with jointly by the consuls and the Chinese authorities, while minor offenders were simply sent to the magistrates in the native city with some details of the offence. A fortnight or so later a note would be received from the city saying whether the prisoner had received the bamboo or had been dismissed, and with this the foreigner's interest in the case generally ceased. This system was manifestly unsatisfactory. In the majority of cases the city magistrate had only the charge to work upon, and unless the prisoner confessed or betrayed himself in cross-examination, it was practically impossible to convict.

"As the result of negotiations, in which Sir Harry Parkes took a leading part, a temporary court was opened in the grounds of the British Consulate, the court building being erected at the expense of the Chinese authorities. The court was opened in May, 1864, and the Chinese deputy magistrate sat daily to hear cases, in dealing with which he had the assistance of a consular officer as assessor. Convicted prisoners were sent into the city for punishment, the graver cases being referred to the chief magistrate, with notes of the evidence, and he continued the proceedings in his own court. The first assessor, Mr. (afterwards

[1] North China Daily News, May 23, 1914.

Sir Challoner) Alabaster, sat in this court four times a week and the American consul-general sat twice a week. The jurisdiction of the court was extended to civil cases in October of the same year, the court then for the first time dealing with cases in which British subjects were plaintiffs, and those against Chinese in foreign employ. In the following year an attempt was made to draw up a code of rules for the court, and rules were afterwards agreed upon, without ever being conspicuously successful. As was pointed out at the time by Sir E. Hornby, judge of the Supreme Court, it was undesirable to encumber the court with written rules; a Chinese court assisted by foreign assessors should be a court of equity rather than a court of law.

"The curious legal situation which has always existed in connection with the court was from the first a great hindrance against successful and smooth working. A consular report of 1889 speaks of the extremely difficult position of the Chinese magistrate who has to fulfil his duties in the court without any code of law to guide him. The Chinese code of law was virtually a dead letter, and no Chinese official had ever before come in contact with anything resembling a set of municipal by-laws."

The foregoing article fails to mention the Chefoo Convention of 1876 between Great Britain and China, to which the United States became a party in 1880[2] and which recited:

"The Chinese Government has established at Shanghai a Mixed Court, but the officer presiding over it, either from lack of power, or dread of unpopularity, constantly fails to enforce his judgments.

"It is farther understood that so long as the laws of the two countries differ from each other there can be but one principle to guide judicial proceedings in mixed cases in China, namely, that the case is tried by the official of the defendant's nationality; the official of the plaintiff's nationality merely attending to watch the proceedings in the interests of justice. If the officer so attending be dissatisfied with the proceedings, it will be in his power to protest against them in detail. The law administered will be the law of the nationality of the officer trying the case."[3]

ORGANIZATION.

As may be inferred from the account above quoted the present Mixed Court is the product of a rather haphazard growth. Its

[2] Treaties between China and Foreign States (Shanghai, 1908), I, 532, 534, Art. IV.

[3] *Id.*, 302, 303.

organization and equipment are evidently the result of no carefully considered plan, but have been devised to meet the exigencies of particular situations. Mr. Rodger, in describing the present organization, states:

"In this court there are five magistrates, and six regular assessors from the consulates, two from the American consulate, two from the British consulate, one Italian, and one Japanese (the latter to take the place of the two German assessors, who do not sit, owing to the war). There are also 10 other special assessors who sit as judges in cases where the matter involves a national other than the above named. Four courts, each with a Chinese magistrate and a foreign assessor, sit daily."

The five Chinese magistrates recently signed a document, composed in the flowery Oriental style, which incidentally illustrates their attitude toward American lawyers and deserves a place in any description of the court.

The occasion of it is thus described by Mr. Rodger:

"I went to Peking on business with a San Francisco capitalist with his San Francisco lawyer, and a Shanghai business man last May. Before going I asked the magistrate (senior) of the International Mixed Court to give me a letter of introduction to the officials there. I expected the usual Mixed Court typewritten letter signed by the senior magistrate alone. Instead of that, I was very pleased to get a huge scroll written in Chinese, five feet long and two feet wide signed and chopped with the seals of all *five* of the Mixed Court magistrates. The translation is attached hereto, and as you can see, is more complimentary than my poor talents deserve."

TRANSLATION.

In the olden times on the eve of the departure of Tung Chao Nan (a famous Chinese scholar) for the States of Yen and Chao, Han Chang Li presented the former with a eulogy in which he said that Tung was a man of profound knowledge and his comradeship with the scholars of Yen and Chao would be productive of much mutual advantage, as men of extraordinary talent would surely meet appreciative reception wherever might be their places of abode.

Mr. H. D. Rodger is a qualified counsellor-at-law and is engaged in the practice of his profession in Shanghai. His office is invariably a refuge for people in trouble and anxiety and even retired consuls in business earnestly seek his valuable advice. He has expressed a desire to follow in the footsteps of Tung Chao Nan and will shortly undertake a trip to Yen and Chao.

Now Tung Chao Nan, who was a Chin Shih (the highest degree a scholar can attain in China), made the journey because his own state did not properly utilize his great talent, but the reason which has prompted Mr. Rodger to travel is a different one. The States of Yen and Chao of ancient times are what is now the capital of the republic, the rendezvous of scholars and statesmen.

Nan Chang Li also said " Where there is justice and righteousness in a nation, there the bird phœnix will make its habitat. In the Han Dynasty, when Huang Pa was Governor of Ying Chuan, the phœnixes actually assembled in his province and sang their praises of him."

Mr. Rodger has heard of the virtue of our President in Peking, and, like the phœnix, is going thither to sing his praises. Although there is a difference in time between the ancient wise men and this modern great man and the ways of ancient people may be different from what they are now, still much good is sure to come out of Mr. Rodger's trip to Peking.

Signed and sealed:

KUAN CHUN,
NIEH CHONG HSI,
WONG CHA HSE,
YU YING WANG,
WANG TOK KYI,

Magistrates of the International Mixed Court, Shanghai, China.

CRITICISMS.

Certain inherent defects in the Mixed Court, as now organized, have long been apparent to any one who cared to inquire. Of late criticism, both professional and lay, has been more frequent—centering mainly upon these points:

1. Lack of legally trained judges.
2. Lack of judicial independence and disinterestedness.
3. Absence of a reviewing tribunal.

1. LACK OF LEGALLY TRAINED JUDGES.

The first one was of the defects which the writer noticed and sought to remedy upon his earliest acquaintance with the court. The foreign assessors are invariably members of the consular staffs (usually vice-consuls) and the wisdom of drawing judges exclusively from such a panel has been seriously questioned. Mr. Jernigan criticizes it on two grounds:

"If I may, with becoming propriety, refer to my own experience while consul-general at Shanghai," he says, "it would be, that the performance of judicial and consular duties in the sense of acting as a judge one-half of the day, and as consul the other half, was so fatiguing a rôle as often to create the apprehension of not fulfilling either function with the desired proficiency. The consul-general at Shanghai will usually find his consular duties sufficient and exacting to cool all ambition to hold court and write opinions on the law; and, after surveying the situation, will feel a relief that he has at least been permitted to let law cases alone. . . . .

"During the four years I was consul-general at Shanghai, I am unable to say, that any American Mixed Court assessor had been a regular law student, or was commissioned, according to the laws of any state, to practice law. How, then, can it reasonably follow or be expected, that an assessor who has never had any legal training should intelligently watch the proceedings of a court and sensibly inform his government whether it keeps within or outside of the orbit of justice? To admit the contrary, would be equivalent to admitting that law teachers and law schools were unnecessary."

This lack of legal training is one of the traditions of the court. It appears to have originated in the notion of the British judge above mentioned who thought the court should be one of "equity rather than of law" (though equity judges are surely not less learned than law judges), and perpetuated in a remark current in some circles that "any one will do for a Mixed Court assessor if he has good common sense and is prepared to administer 'raw equity.'" As to this the writer had occasion to observe as long ago as January 25, 1915:

"Of course every judicial (or other) officer ought to have the first qualification and the higher his post the more urgently is it needed. But a great deal more must be added in order to make a capable judge.

"As to the second qualification, if I am correct in my analysis of the legal system which the Mixed Court should apply and of its possibilities in assisting the Chinese and influencing the course of their legal development at this very impressionable period, then it is clear that the assessor who is to participate seriously in this task must have some other equipment than 'raw equity.' Indeed I know of no single field which offers at present such rare opportunities of service to the practical student of jurisprudence. Naturally the more law a Mixed Court assessor knows, the nearer he will come to meeting these opportunities."

Of course if the foreign assessors are not professionally trained it is hardly to be expected that the Chinese magistrates will be. For until very recent years there was no legal profession in China and no attempt to train one.

2. Disinterestedness and Independence.

The assessor system tends to conflict with judicial disinterestedness. The assessor sits primarily because one of his fellow nationals is a litigant and it is naturally difficult for either of them to divest himself of the notion that the former is to some extent an advocate, or at least protector, of the latter's interests; whereas the aim should be to exclude all national or similar considerations and center attention solely upon the merits of the cause.

Moreover vice-consuls are, in all other duties, under the orders of their consular chiefs and it would be contrary to human nature if this did not also affect their judicial work. Recently, on the other hand, interference by the Peking government with the Chinese magistrates is alleged to have occurred. One of them in explaining his reasons for refusing to join in an assessor's judgment is reported[4] to have said:

"As a matter of fact the court has a right to give its own decisions, but this is an organization established by the government and the government has sent a strong telegram saying this court had no right to hear this case and therefore the magistrate says he has to give it some consideration because this is a government institution."

3. Absence of a Reviewing Tribunal.

It will seem little less than astounding that the judgments of such a tribunal, presided over by laymen, but passing on questions of life, liberty and property, practically without limit, are final. Yet such is the case and it illustrates, better than any other feature, the lack of any far-sighted policy in establishing the court. In no other *nisi prius* or first instance tribunal of which we are aware is the litigant without the right of appeal.

[4] North China Daily News, January 1, 1919.

REMEDIES.

The material for an appellate tribunal exists already in Shanghai in the persons of the judges presiding over those foreign courts (three in number) which are independent of their consulates. Two of these could be drawn in turn for each important case, to sit with a Chinese judge of recognized ability and standing selected by the authorities of his country with the approval of the legations. The plan would impose more labor on the foreign judges, but I believe that most of them would be willing to undertake it for the opportunities it offers of real assistance to China and of participating in an important piece of permanent and constructive work.

This appellate tribunal might well take over also the supervision of the Mixed Court as a whole, and, in conjunction with the local Chinese Commissioner of Foreign Affairs, select its judges. When the writer was first appointed to the Philippine judiciary he found the justices of the peace—there an important people's court—practically under the control of the provincial governors and the object of much complaint and criticism. Impressed with the incongruity of the situation he drafted a bill which placed the justices' courts, as regards both supervision and appointment, under the Judges of First Instance. It met with opposition as all suggestions regarding the Mixed Court probably will now, but the Philippine Commission was finally induced to enact the measure* and the improvement of the justices' courts was noticeably prompt. No one would think now of returning to the old system. I believe that a similar result would follow here. The Mixed Court would be relieved entirely of consular control and it would be feasible to appoint professionally trained judges, both native and foreign, because the selection would not be confined to the consular services and there are now many bright young Chinese who have studied in foreign law schools and who could thus be given the opportunity to demonstrate their judicial capacity. There should be not less than nine of these judges, of whom at least three could well be Chinese, and should they sit individually provision should be made for a motion for

*Philippine Act 1627 (1907).

a new trial before a bench of three which should also hear originally the most important cases.

Of course, too, such a court should have a legal system to apply and that would afford an additional reason for the early adoption of modern codes in China. And if its government is wise it will seek the assistance and approval of the other powers in framing these codes and endeavor to make them satisfactory to foreigners in order that they may be willing to adopt them as their own and thus bring about uniformity of law in China.

The reorganization of the Mixed Court on such lines would bring it close to the mixed tribunals of Egypt[*] which have now been in existence for nearly a half a century and have been much commended. And it would not only remove the grounds of criticism above discussed; it would provide a much-needed experiment and open the way to still more important results. For if the Mixed Court thus reorganized and supervised should prove satisfactory it might in time take over all judicial business, foreign as well as native, within the Settlement, thus relieving, as regards local jurisdiction, the various foreign courts with their diverse legal systems. A reformed and efficient Mixed Court in Shanghai should also afford a model for the establishment of a real judicial system elsewhere in China. "For it must be remembered that China never produced an independent judicial, as distinguished from administrative, system." The Chinese judiciary, if it is to be permanent, and is to win the confidence of the powers, must be constructed from the ground up. And the place to begin is at Shanghai—the gateway of China. A distinguished Chinese reformer inquired recently of the writer, "Why don't you foreigners make Shanghai a model for the Chinese elsewhere

[*] Hinckley, Consular Jurisdiction in the Orient, 155, 156, where it is said:

"There are three courts of first instance, each originally composed of seven judges, four aliens and three natives, and a court of appeals at Alexandria, similarly composed. The number of judges has since been increased."

"The excellence of their administration has been deservedly praised. . . . . Questions of personal status, matrimonial causes and inheritance belong as formerly to the consular courts, yet jurisdiction in these matters has tended to widen because the excellent administration of the tribunals has led to the submission to them of whatever could be claimed to be within their power." *Id.*

This appears to point the way for China.

just as you Americans have done as regards institutions in the Philippines?" In respect to the judicial this is perfectly feasible. And a successful experiment in Shanghai would go far toward solving the problem for the whole of China.

EXPATRIATION OF NATIVE CITIZENS.

IN THE UNITED STATES COURT FOR CHINA.

In re LAST WILL AND TESTAMENT OF ROBERT EDMUND LEE, DECEASED.
(Filed March 30, 1918.)

SYLLABUS.

1. *Citizenship* by birth carries with it certain privileges not available to naturalized citizens.

2. *Foreign Residence.*—Among these is greater latitude as regards residence abroad.

3. *The Modes of Expatriation* prescribed by the Congressional Act of 1907 are exclusive.

4. *Naturalization.*—The benefits of a father's naturalization accrue to his minor children.

5. *Extraterritoriality.*—American citizens residing in extraterritorial countries remain "subject to the jurisdiction . . . . of the United States" to a much greater extent than those residing in other foreign countries.

6. *Evidence.—Copies of Parish Registers*, duly authenticated, and admissible in evidence in the jurisdiction where they are issued, will be admitted here to prove an act recorded therein.

Ralph A. Frost, Esquire, and Jernigan, Fessenden & Rose, by Mr. Rose, for the proponent.

Chauncey P. Holcomb, Esquire, U. S. District Attorney, appeared for the government, but offered no objection to the decree.

LOBINGIER, J.:

The petition in this cause contains the usual averments for the probate of a will alleging *inter alia* "that Robert Edmund Lee an American citizen . . . . died on July 4, 1917, in the city of Kiukiang." Evidence in support of the petition is presented in the form of depositions, one by decedent's wife and another by Ralph A. Frost, Esquire, who testifies that the deceased was "born in St. Louis, Mo., about 1867." A document emanating from the consul-general of the district where the deceased lived and presented by the district attorney, who was requested by the court to appear in the government's behalf in this cause, contains the following recital:

"Robert Edmund Lee was born on April 22, 1868, at St. Louis, Missouri. His father, Alla Lee, a Chinaman, was married to Sara Lee, an American woman, and he, Alla Lee, was naturalized in St. Louis Criminal Court on September 17, 1868."

In addition to the foregoing the proponent presents a copy (Exhibit "H"-9) of the Parish Register of Grace Church (Episcopal) of St. Louis, authenticated by the priest in charge, from which it appears that one Robert E. Lee was baptized therein on June 2, 1867. The document further recites that he was born on April 20 of the same year and that his parents were Alla and Sarah Lee. Copies of such registers are admissible in England and in a majority of American jurisdictions which have passed on the question.[1] They are not admitted in Massachusetts, but there a civil registry of such facts has been kept according to law since 1639 and it, and not the parish registry, is the official one.[2] There being no civil registry provided in this jurisdiction, the decedent not having been born here anyway, and the document being admissible in the jurisdiction where it was issued[3] we hold that said certificate is competent evidence of decedent's baptism on the date and at the place recited therein.

It is true that the said document does not recite the *place* of decedent's birth, but there is offered in evidence (Exhibit "B")

[1] *England.* Draycott *vs.* Talbot, 3 Brown, P. C. (2d ed.) 564); May *vs.* May, 2 Strange 1073; Wihen *vs.* Law, 3 Starkie 63; Doe *vs.* Barnes, 1 M. & Rob. 389; Starkie, Evidence (4th Eng. ed.) 299, note f.

Federal. "The entries in the register of burials, and in the family Bible, are admissible evidence in a case like the present; and if there were no other proof of the death of Charles Willing, the ancestor of the complainants, they might be considered as showing his death in 1788." Lewis *vs.* Marshall, 5 Pet. 469*.

Louisiana. Succession of Justus, 48 La. Ann. 1096, 20 So. 680.

Michigan. Hunt *vs.* Supreme Council, 64 Mich. 671, 31 N. W. 576; Durfree *vs.* Abbott, 61 Mich. 471, 28 N. W. 521; Hutchins *vs.* Kimmell, 31 Mich. 128.

Missouri. Childress *vs.* Cutter, 16 Mo. 24, 46.

New Jersey. Supreme Assembly *vs.* McDonald, 59 N. J. L. 248, 35 Atl. 1061.

Philippines. Adriano *vs.* de Jesus, 23 Phil. 350.

[2] Kennedy *vs.* Doyle, 10 Allen 161, Thayer's Cases on Evidence 437.

[3] Childress *vs.* Cutter, 16 Mo. 24, 46.

a certificate issued by the clerk of the Criminal Court of St. Louis on September 17, 1868, reciting that—

"Alla Lee, a native of China who applies to be admitted a citizen of the United States, comes and proves to the satisfaction of the court that he has resided in the United States at least five years . . . . is admitted a citizen of the United States."[4]

The appearance of the identical name of Alla Lee in both of these documents raises the presumption that they relate to the same person,[5] while the judicial administration of the oath of allegiance recited in the certificate last mentioned "amounts to a judgment of the court" whose recitals are presumed to be correct.[6] It thus appearing that Alla Lee had "resided in the United States at least five years" on September 17, 1868, we feel justified in finding that the child which he and his wife presented for baptism on June 2, 1867, and whose birth is recited as having occurred on April 20, was born in the United States.

Under the federal constitution[7]

"All persons born or naturalized in the United States and *subject to the jurisdiction thereof,* are citizens of the United States."

It is true that the amendment containing this provision was not declared to have been ratified until July 21, 1868,[8] which was after the birth date above recited, but the rule as to citizenship by birth was exactly the same before the adoption of the amendment[9]; the latter merely confirmed and codified the pre-existing law.

[4] "Some courts . . . . admitted Chinese to citizenship" before "the act of May 6, 1882 (22 States at large 61, chap. 126)." Van Dyne, Citizenship, 57, 58.

[5] Spreckels *vs.* Ward, 12 Phil. 414, 7 Off. Gaz. 146. *Cf.* U. S. *vs.* Adolfo, 12 Phil. 296, 7 Off. Gaz. 141.

[6] Campbell *vs.* Gordon, 6 Cranch (U. S.) 357.

[7] Amendment XIV, sec. 1.

[8] U. S. Rev. Stats. 31, note.

[9] U. S. *vs.* Wong Kim Ark, 169 U. S. 649; *in re* Look Tin Sing, 21 Fed. 905; Lynch *vs.* Clarke, 1 Sandf. Ch. (N. Y.) 583 (1844), where the Vice Chancellor declares at the close of an exhaustive review of the authorities:

"I can entertain no doubt but that, by the law of the United States, every person born within the dominions and allegiance of the United States, whatever were the situation of his parents, is a natural-born citizen."

Of course the naturalization of Alla Lee, which was authorized by the law of that period, would have *ipso facto* naturalized his minor child [19] even had the latter been born outside of the United States. But we consider the showing set forth above sufficient to prove that Robert E. Lee was a native citizen of the United States, and that this fact was of more importance to him than naturalization would have been will presently appear.

The conclusions thus far reached are not disputed in any quarter. They are in fact recited in the consular document above quoted. That document, however, contains other recitals from which it appears that, while the decedent was registered in said consulate "for a great many years," and his registration expired only on March 15, 1915, "and through an oversight was not renewed," his last application for registration was denied. The grounds of such denial are set forth at length in the document above quoted and, in order that the position of said consulate may be fairly stated and fully understood, are reproduced here. They are as follows:

"In 1880 Robert E. Lee accompanied his father and sister to China, where his father continued to live till his death, and Robert E. Lee has resided in Shanghai and Hankow continuously till the present time.

"In reply to an inquiry regarding his reason in not having returned to the United States since his departure in December, 1897, he states, 'I have not returned to the United States since I departed in 1879, the reason is, since the new law which requested American citizens to return home after five years, I have been an invalid and am unable to walk.' He further states, 'It is my intention to return to the United States to reside.' Again 'as I am an invalid unable to walk I do not know when I can return home.' No definite time for his expected return is given. Again he says, 'The reason for my prolonged residence in China is that I can support myself and family by managing my business affairs here which I could not do, if I were residing in America under my present condition.'

"The *animo* (*us*) *revertendi* without regard to his ability to return is a material point in determining whether or not he has voluntarily expatriated himself. In determining this question a number of things should be taken into consideration, and though

[19] Campbell *vs.* Gordon, 6 Cranch (U. S.) 357; North Noonday Milling Co. *vs.* Orient Milling Co., 1 Fed. 522, 527. See other authorities cited in 11 Corpus Juris 1128 note 67.

he stated that he intends to return, his life, his property, his family, his connections (business and social) are such as to raise doubt which is almost, if not quite, conclusive that he has no definite plans to this end.

"He was married to Daisy Chang, who was born on the 'first day of the twelfth moon, 1889.' Daisy Chang is a Chinese woman, who, however, has a fair English education, and as fruits of this marriage four children have been born. The children, it is admitted, are taught the English language and wear European clothing, though the wife wears Chinese clothing. Mr. Lee in all these years has acquired property interests in China estimated by himself at $10,000 gold, and none in the United States, and he has shown no desire to realize on his property, but rather to acquire more, and so exclusively are his property interests here that it must be considered that his residence is permanent. His wife has not been in the United States and does not associate with the American people. All the circumstances, his residence and his family tend to disprove any intention, other than floating, to return to the United States to reside, or that he is desirous to return to resume the obligations of citizenship there. He states, 'The relatives I have in the United States are:

"'William Graham (uncle), Mrs. Catherin Graham (aunt), William Graham (cousin), John Graham (cousin), Miss Alice Graham (cousin), Richard Graham (cousin), Kitty Graham (cousin). When I left *home*, the mentioned relatives were residing in Shipman, Illinois, U. S. A.' No correspondence with them.

"It is understood that under certain conditions presumption cannot extend against one residing abroad. For example, as missionary the presumption of expatriation will be overcome, or if extending American business he will be considered to have sound reasons for remaining abroad, or if his health was such that his residence abroad was necessary for continuance of life, he will still not be required to return to America to maintain his citizenship.

"He is not a missionary. He is a business man, a dealer in real estate and acting as a commission agent, but when requested to give some instances where he advanced American interests he states that he is a dealer in vermillion and yellow lead. Thus he advances American interests and further states, 'The way I advance American trade is by importing it or by advising China merchants and acquaintances to deal in and use American goods, sometimes I get samples for them and give them all the information I can concerning the American manufactured goods and products. I have imported American fire-proof safes, dry goods and fancy goods. About half of the Hankow ricksha springs are American manufacture which was imported by me. I also, for my own private household use, send one or two orders home every

year and try to get my acquaintances to do the same. When the goods arrive, I generally show them to the merchants and friends and tell them to compare the articles with the other foreign goods and they will see the superior quality for themselves. All our houses when building or repairing, when wood is used, we use American wood, locks, hinges, and other things are American manufactured.' So far as a fire-proof safe is concerned and some of the Hankow ricksha springs, there is reason to believe that his statement is correct, but there is considerable doubt whether he did it purely for the advancement of American interests or as an owner desiring to obtain the best articles. The same is true in regard to small articles used in his buildings.

"His knowledge of American articles is not sufficient to qualify him to be of any assistance in the extension of American trade and his plans are purely for the extension of his own business regardless of the source of supply and regardless of the origin of the goods used.

"In reply to an inquiry as to correspondence with America during the last three years he says: 'Within the last three years I have had business correspondence with Montgomery Ward and Company in Chicago, Illinois, and with Reverend Reed, minister of the Church of Grace, now called the Holy Cross House in St. Louis, Missouri.' It is known to this consulate-general that correspondence with Reverend Reed was to obtain copy of his or his brother's birth or baptismal certificate; with Montgomery Ward and Company was for household articles illustrated in this firm's catalogue on file in this office.

"In regard to his health, and it is this which, if estopped, prevented the presumption of expatriation: There is no question but that he is physically unable to return to the United States, as he is, excepting his mind, a total paralytic unable to move, and has been for 15 years, and on this account he has been registered, but it is respectfully submitted to the department that one who is seriously ill invariably realizes that he should return to the country and locality of his nativity where his closest relatives abide, and in no other way can health be restored is his imagination. He was a healthful lad of 12 years when he came to China, and what ailments he had were contracted in this country. He has never attempted to prove that the American climate had a detrimental effect on his health. His registration has been provisional *only* pending instructions, because it is understood that for ill health to overcome the presumption of expatriation it must be of such a character that a return would be a detriment and it is not believed that an incurable illness which prevents travel shall be the cloak to cover citizenship, unless it be accompanied by some well-established desire to resume residence in America."

The Department of State, to which the question was finally referred, declined to approve decedent's registration on the ground of a discretionary right "to refuse its protection to one who has left the United States for permanent residence abroad," but it was also stated, through Director Carr of the consular service, that—

"In the absence of any statute prescribing that by prolonged residence abroad a native citizen of the United States shall be presumed to have expatriated himself, the department refrains from expressing an opinion on that point."

The question of decedent's nationality being thus expressly left open and a determination thereof being necessary before the exercise of jurisdiction to pass upon the instrument here offered for probate, the situation appears to call for an investigation and decision of the question presented by the recitals of the consular document above quoted, viz.: whether continued residence abroad under the circumstances there detailed *ipso facto* forfeits the status of a native citizen. We are, of course, not considering the question of consular registration which is a ministerial act under direction of a co-ordinate branch of the government.

II.

At common law there seems to have been no method by which a subject or citizen could lose that status. As was declared in an early English case [11]—

"It is not in the power of any private subject to shake off his allegiance and transfer it to a foreign prince."

Nor was the rule peculiar to English law. The doctrine "once a citizen always a citizen" was as much a part of the common law of America [12] as of England. And while the political branch of the government recognized the right of expatriation on the part of subjects of other powers and accepted them as American citizens, the courts adhered to the doctrine that as to our own citizens "allegiance, without mutual consent, is indissoluble." [13]

[11] The Case of Aenas MacDonald, Foster's Crown Law, 59, Scott's Cases on International Law, 370 (1747).

[12] The Williams Case, Wharton's State Trials 652, Scott's Cases on International Law 372 (1797); Shanks *vs.* Dupont, 3 Pet. (U. S.) 242 (1830); Kent's Commentaries 11, 60.

[13] Wharton's State Trials, 658.

This legal situation continued for more than three-quarters of a century after the foundation of the federal government. At last in 1868 Congress passed an act reciting in the preamble that "the right of expatriation is a natural and inherent right of all people" and providing—

"That any declaration, instruction, opinion, order, or decision of any officers of this government which denies, restricts, impairs, or questions the right of expatriation, is hereby declared inconsistent with the fundamental principles of this government."[34]

This was followed three years later by a convention between the United States and Great Britain providing for mutual recognition by each contracting nation of the right of expatriation on the part of certain of its own and the other's nationals.[35]

But this legislation was far from sufficient, for it failed to prescribe the mode of expatriation. As was observed by President Grant in a message to Congress some five years after the passage of the statute last cited:

"The United States, who led the way in the overthrow of the feudal doctrine of perpetual allegiance, are among the last to indicate how their own citizens may elect another nationality. . . . . I invite Congress now to mark out and define when and how expatriation can be accomplished."[36]

But Congress was slow to act and meanwhile various theories and practices arose in the political branch of the government to meet exigencies. Thus the Department of State had occasion to announce not infrequently that the government would not extend its protection to American citizens who should acquire a permanent residence in a foreign country.[37] In most of these cases the subject was a naturalized citizen and in some of them his conduct had been quite inconsistent with the retention of American citizenship. But it was expressly declared by one head of the department, a distinguished American lawyer, that—

"Continued residence of a native American abroad is not expatriation, unless he performs acts inconsistent with his Ameri-

[34] Act of Congress of July 27, 1868, 15 United States Stats. at Large, 223, chap. CCXLIX, sec. 1.

[35] 17 United States Stats. at Large, 841.

[36] United States Foreign Relations (1873) I, vii; Messages and Papers of the Presidents (Richardson) VII, 329 *et seq.*

[37] Wharton's Int. Law Digest II, 447 *et seq.*; U. S. Foreign Relations (1888) I, 510 *et seq.*

can nationality and consistent only with the formal acquirement of another nationality, and the same rule holds equally good in the case of a naturalized citizen of the United States who may reside abroad otherwise than in the country of his original allegiance." [18]

The arbitrators of certain Spanish and American claims [19] are quoted as having decided that—

"A citizen of the United States who, being of lawful age, leaves the United States and establishes himself in a foreign country, without any definite intention to return to the United States, is to be considered as having expatriated himself." [20]

But after a somewhat extensive search we have found no decision by any regularly established court announcing that doctrine. There are indeed certain Philippine cases [21] adopting expressions of the State Department similar to those above noticed, but these are mere *dicta* since they did not and could not construe the American naturalization laws which are not in force in the Philippines.

From the first the trend of judicial and legal thought in the United States appears to have held consistently to the view that something more than mere residence abroad is required in order to effect a forfeiture of citizenship. Thus a Virginia decision, early in the century declares—

"A temporary absence will not divest a man of the character of citizen, or subject of the state, or nation to which he may belong. There must be a removal with an intention to lay aside that character, *and he must actually join himself to some other community.*" [22]

[18] Secretary Evarts in U. S. Foreign Relations (1880) 960.

[19] 17 U. S. Stats. at Large 839.

[20] Moore's International Arbitrations III, 2565.

[21] Lorenzo *vs.* Collector of Customs, 15 Phil. 559; Munoz *vs.* Collector of Customs, 23 Phil. 494; Lim Teco *vs.* Collector of Customs, 24 Phil. 84; Roa *vs.* Collector of Customs, 23 Phil. 315. Moreover the opinions do not show careful research. That in the case last cited (per Trent J.) declares, *e. g.*, that "there is no mode of renunciation of citizenship prescribed by law in the United States," although the Act of 1907 prescribing such mode had then been in force for some five years.

[22] Murray *vs.* M'Carty, 2 Munf. 394 (1811) citing Puff. b. 8, c. 11, s. 3, p. 869; Hein. b. 2, c. 10, s. 230.

Four years later Mr. Justice Washington, presiding in the federal circuit court, made the following observations in the case of an American who had then been residing with his family in England for 11 years:

"It is true, that a man may obtain a foreign domicil, which will impress upon him a national character for commercial purposes, and may expose his property, found upon the ocean, to all the consequences of his new character; in like manner, as if he were, in fact, a subject of the government under which he resides. But he does not, on this account, lose his original character, or cease to be a subject or citizen of the country where he was born, and to which his perpetual allegiance is due." [22]

The Department of Justice adhered to this view. Attorney-General Black announced that—

"Expatriation includes not only emigration out of one's native country, but *naturalization in the country adopted as a future residence.*" [24]

So Attorney-General Williams, writing in 1873, five years after the passage of the Expatriation Act, said:

"When a citizen of the United States goes abroad without intending to return, he takes one indispensable step towards expatriation; but to effect a complete annihilation of all duties and obligations between the government of his native country and himself, which expatriation implies, it is necessary that he should become a resident in some foreign country with an intent to remain there, superadded to which *there must be acts in the direction of becoming a citizen or subject of such foreign country, amounting at least to a renunciation of United States citizenship.*" [25]

III.

Thus the law stood until 1907 when Congress for the first time provided a statutory mode of expatriation.[26] Sec. 2 of that statute reads in part as follows:

"That any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state."

[22] U. S. *vs.* Gillies, Pet. (CC.) 159, 3 Wheeler Crim. Cas. 308, 25 Fed. Cas. 1321.

[24] Opinions of the Attorney-General, IX, 359.

[25] *Id.*, XIV, 297, 298.

[26] Act of March 2, 1907, 34 U. S. Stats. at Large, p. 1228, chap. 2534.

The balance of the section relates entirely to naturalized citizens with whom we are not here concerned. This act is, as we have seen, in derogation of the common law which recognized no right or mode of expatriation. The rule is that such a statute must be strictly construed.[27] Moreover, the maxim *expressio unius est exclusio alterius* is, according to Mr. Broom's classical work,[28] "never more applicable than when applied to the interpretation of a statute." Thus where an act specifies one or more modes of accomplishment other modes are by implication excluded.[29]

The Act of 1907 prescribes two modes of expatriation by a native citizen, viz.: (1) Foreign naturalization, and (2) taking the oath of allegiance to a foreign state. No other modes being recognized or mentioned, these would seem under the rules above quoted to be exclusive.

Moreover, the situation of American citizens in China, and other countries where our government exercises extraterritorial jurisdiction, is wholly different from that where such jurisdiction does not obtain. When an American citizen takes up his abode in England, *e. g.*, he subjects himself to its laws and administrative regulations and to the jurisdiction of its courts. To a great extent his own government ceases to exercise authority over him. But an American citizen in China, whether residing temporarily or permanently, remains as much under the jurisdiction of his government, its laws and its institutions as if he were residing at home. Moreover, it is now well settled in our

[27] Cyc. XXXVI, 1179, note 16.

[28] Broom's Legal Maxims 664*.

[29] *England.* "Affirmatives in statutes that introduce a new rule imply a negative of all that is not within the purview. Hob. 298. And when a statute limits a thing to be done in a particular form, it includes in itself a negative, viz., that it shall not be done otherwise. Plowd. 206 b. Affirmative words in a statute do sometimes imply a negative of what is not affirmed, as strongly as if expressed. Nott, J., in Cohen *vs.* Hoff, 2 Tredway 661." (Kent's Commentaries I, 467, note.)

Iowa. District Township *vs.* City of Dubuque, 7 Iowa 262.

New Mexico. In re Attorney-General, 2 N. M. 49, 56.

Oregon. Scott *vs.* Ford, 52 Or. 288, 97 Pacific 99.

Tennessee. Rich *vs.* Rayle, 2 Humph. 404, 407.

Texas. Bryan *vs.* Sundberg, 5 Tex. 418, 423.

law that such a citizen may even acquire an American domicile in China."[20]

It is one of the elements of citizenship as prescribed in the constitutional definition[21] that one is "subject to the jurisdiction of the United States."[22] Under the Act of 1907 that jurisdiction would seem to continue until the native citizen has become naturalized in China. And it seems that such a process was not possible during decedent's lifetime. Under the so-called "Manchu Code" (Ta Ching Lu Li) capital punishment was imposed upon "all persons renouncing their country and allegiance, or devising the means thereof."[23] And while the Treaty of 1868 recognized on the part of both contracting parties "the inherent and inalienable right of man to change his allegiance,"[24] and expressly authorized residence in their respective territories, it also provided[25] that "nothing herein contained shall be held to confer naturalizations upon citizens of the United States in China, nor upon the subjects of China in the United States." From this it would appear that an American citizen is precluded from changing his allegiance by mere residence in China. Moreover, it appears that until 1909[26] no provision was promulgated by which a foreigner might acquire Chinese nationality; that the machinery for applying that law has but lately been provided if at all; and that no case of naturalization thereunder has yet occurred. There is no claim that the decedent ever acquired, or sought to acquire, such naturalization. On the contrary it

[20] *In re* Robert's will (U. S. Court for China, Estate No. 10); *in re* Allen's will (U. S. Court for China, Estate No. 41), American Journ. of Int. Law, I, 1029; Mather *vs.* Cunningham, 105 Maine 326, 74, Atl. Rep. 809, American Journ. of Int. Law 4, 446.

[21] Federal Constitution, Amendment XIX, sec. 1.

[22] *In re* Look Tin Sing, 21 Fed. 905, where Field, J., construes this phrase.

[23] Chinese Code, Staunton's translation, sec. CCLV.

[24] Treaties between China and Foreign States (Shanghai, 1908) I, 527, Art. V.

[25] *Id.*, Art. VI.

[26] A summary of the Chinese "Nationality Act" of that year appears in the Bulletin of the Comparative Law Bureau, III, 98-100 (1910) by Dr. Chung Hui Wang, of the Chinese Law Codification Commission, who now writes that the act has been twice amended. See Law of 18th day of the 11th moon, of the first year of the Republic.

appears that his claim of American citizenship was constant and steadfast and the sole ground for impugning it seems to be that he married and settled in China and remained here during most of his life without a definite intention of returning to his native country. The impossibility of his becoming a Chinese national has merely this bearing; that if his American citizenship was forfeited he was, and had to remain, a man without a country, his estate cannot be administered in any court, and his family is left without legal status, recognition, protection or even means of support. A conclusion which would entail such a chain of catastrophes ought never to be announced unless the law imperatively requires it. We do not find that the American law does require it, but on the contrary our researches have led us to the opposite conclusion.

We accordingly find from the evidence—

(1) That the deceased, Robert Edmund Lee, was born, lived and died an American citizen;

(2) That he left property, of the value of more than five hundred dollars, United States currency, within the jurisdiction of this court where he died on July 3, 1917;

(3) That the instrument offered in evidence as Exhibit "A" is the last will and testament of the said decedent; that it was voluntarily and validly executed by him at a time when he was of sound mind and disposing memory; and that the same was intended to be his last will and testament;

(4) That said instrument names as executrix Daisy Lee, the wife of said decedent, and that no reason appears why letters testamentary should not be issued to her.

It is accordingly considered and decreed that said instrument be and it hereby is admitted to probate as the last will and testament of said decedent and that since the said instrument authorizes her to serve without bond, such letters issue to the said Daisy Lee as executrix upon her taking and subscribing the oath according to law.

COMMENT.

Writing to the author of the foregoing opinion, Dr. John Bassett Moore, formerly counsellor of the State Department and still the foremost teacher of international law in America, said:

"Not only do I consider your conclusions to be correct, but I welcome them as an authoritative contribution towards the establishment of a distinction which is too little understood.

"In my History and Digest of International Arbitrations I devoted an entire chapter (Vol. III, Chap. 56) to the 'Renunciation or Forfeiture of the Right to National Protection.' I used this phraseology for the purpose of opening the way to the correction of the supposition, which has so extensively prevailed in judicial and diplomatic utterances, that the refusal to extend protection to a citizen could be justified only on the ground that he was 'expatriated,' in the sense of having lost his citizenship. I make the same distinction in my Digest of International Law, Vol. III pp. 757-790. It seemed to me that one of the few improvements made by the Act of 1907 in pre-existing law was the fact that it recognized, perhaps unintentionally, that distinction.

"So far as concerns the courts, the confusion in which the subject has been so generally enshrouded is largely due to the unprecise and more or less promiscuous use of the terms citizenship, domicil and expatriation. Citizenship has been used in the sense of domicil, domicil has been used in the sense of citizenship, and expatriation has been used indiscriminately to denote changes of citizenship and changes of domicil.

"So far as concerns the executive department, there has been a special confusion chiefly due to a misinterpretation of the statutory requirement, based on the Expatriation Act of 1868, that no distinction shall be made in the treatment of native citizens and of naturalized citizens abroad. On the assumption that this meant that no account was to be taken of the circumstance that the one was a native and the other a naturalized citizen, our Secretaries of State have in fact often subjected the native citizens to a discrimination for which there was not the slightest legal justification. Our naturalization treaties, with perhaps a single exception, have incorporated the principle that a naturalized citizen permanently returning to the country of his origin is to be considered as having renounced his naturalization. This rule has a justification in law as well as in common sense. But to say that a native citizen who goes to reside even permanently in a country that never had a claim to his allegiance, should be treated as if it were the country of his original allegiance, is justified neither in law nor in common sense. Whenever I have had an opportunity I have endeavored to impress these considerations upon those in authority. Your compact and well-reasoned judicial opinion will, I believe, be of great value in clarifying the thought of those who have to deal with a subject which has been so much misapprehended."

C. FOREIGN LEGISLATION, JURISPRUDENCE AND BIBLIOGRAPHY.

1. LATIN AMERICA.

BRAZIL.

Agricultural Schools for Poor Children (Decree No. 12,893, of February 28, 1918).—This decree recites that the President considers that the government should adopt every means to promote the movement for the economic transformation of the country by the progressive increase of its productive capacity, and that instruction in agriculture is one of the most important of such means, and is conducive to immediate productive results; that such professional education will greatly increase the production of agricultural products and live-stock, and at the same time tend to re-establish an equilibrium between the population of the cities and that of the rural districts; that it is the duty of the government to endeavor to increase the rural population and to form a real agricultural class as a national element and as an economic factor; and that it is both a social and an economic measure of importance to employ in the formation of a rural class, upon which depends the real future greatness of the country, abandoned and dependent children who are without means of support or without legitimate occupation; therefore, the Department of Agriculture, Industry and Commerce is authorized to establish in the zoological stations, model stock farms, centers of colonization, and other establishments dependent upon that department, agricultural schools (patronatos) for the purpose of providing to such persons primary and civic instruction, and practical notions of agriculture, and zootechnical and veterinary teaching and instruction.

Encouragement of Agriculture (Decree No. 12,896, of March 6, 1918).—This decree recites that wheat is the most important of cereals; that in recent years Brazil has imported wheat to the value of over one hundred thousand contos de réis annually; that historic documents show that a century ago the cultivation and production of wheat had attained considerable extent in various parts of the country, the climate and soil of which is well adapted to the growth of several kinds of this grain, etc.—premiums of agricultural machinery to the value of 30$000 (30 milreis, about

$10) for each hectare (2.2 acres) of wheat cultivated, are offered to all farmers and agricultural co-operative societies, for the years 1918 and 1919, the rules to be observed in the cultivation being stated in the decree.

Regulation of Food Exports (Decree No. 12,982, of April 24, 1918).—This decree recites that it is necessary to regulate (fiscalizar) the exportation of food products of national origin in order to prevent frauds which prejudice the good name of Brazilian commerce in foreign countries; that such regulation, besides establishing a good repute for Brazilian goods in foreign markets, will prevent the recurrence of incidents disturbing to the economic expansion of the country, etc. It is, therefore, decreed: That food products of national production intended for foreign export cannot be despatched through the customs houses without the production of certificates issued by certain federal officials designated. These certificates must state the name and address of the exporter; the kind, quality and quantity of the merchandise; the nature of the packages or containers, and the mark on the packages, which mark shall always contain the word "Brazil"; the weight of the packages inspected, and the date of the inspection. Rules are stated for the issuance of such certificates and for the inspection by sample or otherwise of the goods in each shipment.

Reorganization of Consular Service (Decree No. 12,996, of April 24, 1918).—This decree recites that all the nations are now engaged in reforming their respective consular services in order to make a better propaganda and commerce in behalf of their products; that Brazil needs to secure new markets and develop those it now has; that the consular service should be an active agency for promoting Brazilian commerce, and that for this purpose it is necessary that it be enabled to furnish all necessary information. The decree, authorized by the law of January 6, 1918, thereupon establishes the organization of the consular service on broad lines, it being divided into consuls general, 1st and 2d class, consuls, vice-consuls, chancellors and consular agents. Among others, four consulates are established in the United States, at New York, Chicago, St. Louis and San Francisco. The consular service is professional or "of career," and can only be entered by properly qualified persons beginning as

consular assistants, between the ages of 18 and 30 years. Every official of the consular service is obliged to serve actively at least one year in America, in Asia or in Africa, as a condition to his promotion. Promotions in the consular service shall be made on the basis of two-thirds for merit and one-third for length of service.

Consuls in active service must observe the following rules in order to promote, improve and intensify the commercial and economic relations of Brazil with foreign countries: Promote whenever possible the organization of Chambers of Commerce and assist and collaborate in every way with those already existing; maintain in their consulates exhibits of the principal products of the commerce and industries of Brazil, furnished by the Secretary of State or by private persons; to promote and interest public meetings which may be held, for the purpose of giving information as to the resources and commercial, industrial and economic possibilities of Brazil; to gather and remit to the Secretary of State all data and information which may concern the commercial expansion of Brazil; to use means to secure the prompt dissemination of all information furnished by the Secretary of State, or by any associations or individuals; to keep in their offices the registers required by law, and furnish the Department of State with all information which they obtain; to remit quarterly to the Department of State a report upon the commercial, industrial and economic conditions and in regard to navigation and market quotations which may be of interest to Brazil; to request of the government and any commercial organizations in their districts, the remittance of pamphlets and other publications containing information which may tend to the development and increase of commercial relations; to keep in the offices of the consulates diagrams showing the quotation of prices of the principal Brazilian products, as furnished to them by the Department of State; to reply to all inquiries and requests for information made to them in regard to our commercial and industrial exchanges, with the greatest zeal and promptness.

Anti-Malaria Service (Decree No. 13,000, of May 1, 1918).—This decree recites the imperative necessity of making healthy the unhealthful zones of the country; that malaria is the disease most widely spread in Brazil, and which takes a toll of thousands

of lives yearly, and that, according to the general opinion and the experience of other countries "official quinine" is the most efficacious prophylactic against its spread before it can be eradicated by other means. Therefore a service of official medicines is established, beginning with quinine, others to be furnished as circumstances permit. The Department of Justice and Internal Affairs is authorized to acquire supplies of quinine or salts of quinine in sufficient quantities for the most extensive national distribution, which shall be conducted through the Instituto Oswaldo Cruz of Rio de Janeiro, and which shall be sold throughout the country at an even price to be fixed by the government.

Another decree, No. 13,001, of the same date, directs the same department to organize medical committees throughout the country in order to carry on the system of rural prophylaxis for combating the endemic diseases which are ravaging the interior of the country.

Requisition of Vehicles (Decree No. 13,021, of May 7, 1918).—This decree recites the necessity to the economic conditions of the capital and of the country that all vehicles designed for hauling freight and merchandise should be kept in active use; that the country is in a state of war and also a state of siege, and that the owners of vehicles of the class described, in consequence of a recent municipal regulation, had organized and adopted a resolution to "suspend the use of all such vehicles until the measures complained of be rescinded," thus producing a serious tie-up of traffic; therefore the Departments of War and Navy and the prefect of the federal district are authorized to make requisition of any or all vehicles used for hauling freight or merchandise and belonging to any individuals, firms or companies in the federal district, and to issue all orders and instructions necessary in the premises.

Slaughter of Calves and Cows Prohibited (Decree No. 13,026, of May 15, 1918).—This decree is based upon an accompanying report of a committee appointed to study the subject, which declares that the live-stock industry is one of the principal sources of national wealth, as indicated by the statistics which are cited, and showing the great number of calves and of cows fit for purposes of reproduction which are annually slaughtered for food

in the country. The decree therefore absolutely prohibits throughout the republic the slaughter of calves and of cows under 10 years of age fit for reproductive purposes, and imposes a fine of 100$000 (about $33) for every such calf or cow killed for consumption. A system of inspection is provided, and a system of certificates of healthy condition of the cattle and hides.

An amended decree, No. 13,054, of June 5, 1918, limits the prohibition of slaughter of the cattle mentioned to "the duration of the war."

Arbitration Treaty between Brazil and Uruguay, dated December 27, 1916, is promulgated by Decree No. 13,084A, of June 27, 1918. This treaty is of "General Obligatory Arbitration" between the two nations, and provides: Art. I. All controversies of whatever nature which for any cause arise between the high contracting parties, and which it has not been possible to settle by diplomatic means, shall be submitted to arbitration"; from this being excepted only matters which have been already settled between the two countries, as to which the arbitration shall only affect questions arising "in regard to the validity, interpretation, and fulfillment of said settlements" (Art. II). "Art. III. For the decision of questions which in compliance with this treaty shall be submitted to arbitration, the functions of arbiter shall be conferred upon a chief of state, the president of a superior court or tribunal of justice, or a person notoriously versed in the matter in dispute." The parties failing to agree upon an arbiter, they shall submit to the permanent tribunal of arbitration of the Hague (Art. IV). In each case the parties will sign a special agreement which shall name the arbitrator, the scope of his powers, the matter in dispute, the periods of time, the proceedings and the expenses agreed upon, and the language in which the award is to be made (Art. V). "Unless in cases of denial of justice, Art. I of this treaty shall not be applicable to questions which may arise between a citizen of one of the high contracting parties and the other contracting state, when the judges or tribunals of the latter state have, according to the legislation of such state, jurisdiction to adjudicate the said question" (Art. VI). The two remaining articles provide for the duration of the treaty for a period of five years, and for its renewal continually for like periods unless denounced by either party upon one

month's notice, and for the ratification of the treaty by the respective Congresses, as has been done, and the ratifications exchanged.

Public Food Commission (Decree No. 13,069, of June 12, 1918).—This decree recites that Brazil, in order to assist efficiently in the provisioning with food of the Allied countries and to maintain the equilibrium of its international commercial balance, has the greatest interest in procuring that its exportation should be as varied and abundant as possible; for which purpose, following the example of Allied and neutral nations, such exportation should be regulated and maintained within certain limits, in order that the high cost of living, which is felt in some populous centers of the country, and which renders ever more difficult the subsistence of the people, and especially of the working classes, should not be aggravated, which condition it has become imperative to remedy. The decree therefore establishes a Public Food Commission (Commissariado da Alimentação Publica), of which the duties shall be: to verify weekly the stock of food supplies, and of prime necessity, existing in all stores, warehouses, etc., in order to ascertain their quantity, quality and place of production; to ascertain the cost of production of such articles, the prices at which they were obtained, and the prices at which they are sold to the consumers; to acquire all such supplies, when necessary, by purchase, or by requisition or expropriation on account of public necessity, as an exceptional war-time measure, so as to dispose of the same as need may require; to enter into agreements with the stores and other like establishments for the sale of such food-stuffs and articles of prime necessity, in the quantities and at the prices stipulated, or to establish stores for such sale; to take all other measures tending to the just equilibrium between the requirements of exportation and the needs of home consumption.

Reform of the Diplomatic Service (Decree No. 13,113, of July 24, 1918).—This decree reorganizes the diplomatic service.

Registration of Public Instruments (Decree No. 3510, of July 31, 1918).—This law creates a departure from the ancient and prevalent system of notarial intervention in the making of contracts. It is enacted that contracts written by typewriter or printed may be registered or recorded in the several public offices

of registry when the same are signed by persons who are in the free disposition and administration of their property, with two witnesses, and acknowledgment of the signatures, each of the pages on which the document is written being rubricated, or signed, by the interested parties.

Requisition of Real and Personal Property (Decree No. 3533, of September 3, 1918).—This law authorizes the executive power, during the present war, to make use of private real property; to expropriate all kinds of property and goods; to requisition all kinds of articles of prime necessity, railroads and other means of transportation, rolling stock, etc., to be used directly by the government or through private companies; to control transportation, to suspend traffic in any kind of merchandise, and take all necessary measures tending to normalize the distribution of products. All public authorities, and all private business companies, firms and individuals are required to furnish to the government all needed information.

J. W.

COLOMBIA.

Legislation.

Law No. 51 of 1918 (November 21) on credit institutions or companies.

Article 1. Banks and other credit institutions or companies are subject to the inspection provided for in Art. 120 of the Constitution, and shall be subject to the provisions of the commercial code and to the special provisions on the subject, and to the provisions of the present law.

Art. 2 lists the principal operations which fall within the business of credit institutions.

Art. 3. Credit institutions or companies may issue obligations to a registered holder or to bearer up to an amount equal to the balance of their assets over and above their liabilities, at such rate of interest and amortization as they please, and for a fixed term of maturity not less than 30 days, but upon such maturities and quantities as will enable them to meet the payments out of the aforesaid balance.

The institutions or companies which make use of this power shall transmit to the government and shall publish

monthly their ledger balance and a statement of their assets and liabilities.

Prior to making any issue, the government, acting by the respective inspector, shall make an examination of the financial condition of the company, in order to ascertain whether the issue is sufficiently secured. If from the examination it appears that there is not sufficient security, the issue cannot be made.

Arts. 4 to 7 relate to investment securities, bond issues, prospectuses, etc.

Arts. 8 to 12 refer to a new bureau to be created in the Treasury Department under the name of "Inspection of Circulation." Among the duties assigned to this bureau are the following:

Intervention in or supervision of all matters referring to the currency, banks and other credit institutions, auditing of the junta de Conversion.

Sub-inspectors are provided for.

Examination of banks and other credit institutions must be made at least twice a month.

Violation of the laws governing banks and credit institutions is subject to a fine, to be fixed by the government, of from $100 to $1000 for each violation.

Art. 14. The banks shall transmit to the government and shall publish monthly, under the responsibility of their managers, in the official periodical of their domicile, their ledger balance, and at the end of each semester a statement of their situation, as shown by a general inventory of their assets and liabilities, compiled under the intervention of the inspector or sub-inspector.

If such publication be delayed for more than one month, they shall be subject to the suits (*sic*) provided by the present law.

Art. 15. When a credit institution is organized as a stock corporation, it cannot issue shares to bearer, except when they have been fully paid.

Art. 16. Credit institutions may freely fix their discount and interest rates and commissions, which must be publicly posted in their offices and published in the press.

Art. 17. Credit institutions shall keep in lawful money in their vault 25 per cent at least, of the amount of their demand (?) deposits (depositos disponibles).

Art. 18. Every credit institution must create a reserve fund of not less than 10 per cent of its net profits in each year, which shall not be used for the distribution of dividends.

Art. 19. No credit institution may receive as guarantee or security its own shares nor acquire the ownership thereof, except in liquidation of debts, and in such case it shall be obligatory to sell the same at public auction within 90 days after acquisition.

Art. 20. Foreign credit companies establishing a branch in the republic shall be subject to the provision of the present law in all matters referring to such branches, and cannot in any case invoke any right of alienage in anything relating to their business and operations, it being understood that any dispute of any nature whatsoever that may arise shall be decided by the Colombian courts and shall be entirely subject to the laws of the republic.

Art. 21. Credit institutions are prohibited from in any way stating their subscribed capital without at the same time stating the amount of their paid-up capital.

If a credit company be a subsidiary of a foreign company or bank, it cannot state the capital of the parent house without at the same time mentioning its own capital.

Art. 22 amends the Bankruptcy Law.

Art. 23 and Art. 24 create (for the first time in Colombian law) rules governing options.

Art. 25 provides that all stock corporations or special partnerships with shares shall accumulate a reserve fund, to be formed out of 10 per cent of the net profits up to one-third of the subscribed capital.

Art. 26 amends Art. 330 of the commercial code in regard to carriers.

Art. 27 repeals Arts. 46 and 62 of Law 57 of 1887; Law 77 of 1890; Law 20 of 1907 and Art. 17 of Law 70 of 1913 and other provisions of the law which may be contrary to the present law.

Law No. 56 of 1918 (November 27) "Establishing the Income Tax."

Art. 1. There is hereby established a national tax on all incomes. This tax shall be paid by all natural or juristic persons domiciled in the country or residing therein, and by all persons, natural or juristic, citizens or foreigners not residing in the country but obtaining some income from property or capital situated in Colombia.

Art. 2. For purposes of assessment and collection, this tax is divided into three classes:

1. Income derived solely from capital which shall pay three per cent (3%).

2. Income derived from capital combined with human industry, which shall pay two per cent (2%) per annum; and

3. Income derived solely from industry or labor, which shall pay one per cent (1%) per annum.

From the total income of each individual there shall be deducted the sum of 360 pesos ($360), which shall pay no tax.

Art. 3. Tax payers who have more than two children whom they support or more than two persons whose maintenance, in accordance with the law, they are obligated to care for, and actually do care for, shall have the right to a rebate from the amount of the tax which they would pay of five per cent (5%) for each of such children or persons.

There is excepted, however, the case when such dependents are engaged in a lucrative occupation or have their own fortune. This rebate shall be limited to fifty per cent (50%) of the corresponding tax.

Art. 4. The income of corporations or associations organized for the maintenance of the Catholic religion, for charitable, scientific or educational purposes, savings banks and laborers' mutual benefit associations and associations to promote commerce and industry, provided such associations are not organized with a view to carrying on any business whatsoever and that the income thereof is not paid over to their members or to any alien person or entity.

Art. 5. The government shall issue regulations for this law, prescribe the fixed or contingent salaries to be paid to

the respective officials and shall apply the sanctions of the law to those guilty of defrauding the revenue.

Art. 6. The government, in the reports and declarations which it may demand for the purpose of estimating the amount of the taxable revenue of each individual or corporation shall not be entitled to demand an oath nor to obligate the taxpayer to exhibit his books of account and business papers.

Art. 7. The government may delegate the right to collect the tax prescribed by this law to the governors, intendentes and commissioners (comisarios) and may collect it through the medium of departmental and municipal employees, in which case these employees shall furnish the necessary bonds.

Art. 8. As soon as the nation commences to collect an income tax prescribed by the present law, the right to collect such tax on the part of the departments and municipalities shall cease.

Art. 9. The departments may prescribe freely the amount of the tax for the slaughter of cattle.

Law No. 57 of 1918 (November 27). For the development of the iron industry. Recognizes an annual subsidy up to six per cent (6%) on the capital invested in companies established for the production of iron and steel for three years from the date on which the European peace is signed.

This subsidy shall be paid upon the corporation establishing a complete production for a sufficient time in the judgment of the government for the management to obtain due use of the capital invested.

The subsidy to be paid upon the cash capital invested, the maximum limit being $2,000,000.

The installation of each factory to be visited by government experts. The corporations established under this law are subject to the following:

(a) Equipment to furnish steel of superior quality for railroads and tramways of Colombia needed by the government; should dedicate to this object fifty per cent (50%) of the total capacity of the factory.

(b) To establish a maximum price for its products.

(c) To grant additional discount of ten per cent

(10%) in the sales of their products to the national government departments or municipalities when destined to work of a public benefit.

(d) To employ on equal terms students of technical schools where such students do not constitute a prejudicial element.

(e) To freely assist visits and excursions for purposes of study to the students of such schools.

When for three consecutive years the corporation shall have received twelve per cent (12%) on the capital invested, the subsidy will be considered terminated.

No tax or impost of any special character shall be assessed against these corporations, but they will not be exempt from the payment of ordinary taxes now in force or which may be established in the future.

The government shall establish in all contracts any other conditions which it esteems convenient to protect the interests of the government.

Provisions for translation of the law into foreign languages, also for obtaining minimum freight for merchandise, etc., for the factories mentioned and construction of railway branches necessary for the transportation of materials.

Law No. 58 of 1918 (November 27). Re Public Credit.

Authorizes the government to increase to ten per cent (10%) the annual interest on Colombia bonds provided for in Law 23 of 1918.

Provides for the modification of interest on the bonds in the event of their being sold wholly or partially in other countries.

Provides also for the preference in application of proceeds of the bonds to special work.

Law No. 52 (November 21, 1918) which amends Law No. 83 of 1915 concerning the detention and provisional liberty as well as the suspension of judicial sentences.

That any defendant meriting a term at hard labor or one of solitary confinement be permitted with the exceptions enumerated in this law to furnish bail. The ex-prisoner is under obligation to appear at stated intervals before a judge either in his proper person or in the person of his bondsman. His failure to do so will cause his reincarceration.

No pardon or liberty may be obtained for persons found guilty of the following crimes:

Crimes against the nation.

Crimes against the public good except perjury.

Crimes against the public treasury.

Crimes against any public official in the exercise of his duties if it be known that the aggressor was cognizant of the fact at the time the crime was committed.

Crimes such as poisoning, premeditated homicide, manslaughter and parricide in their gravest forms.

Setting fire to edifices with the intention to kill, or conflagration in the cases mentioned in Arts. 861 and 862 of the Penal Code, assault, rape and castration.

Crimes committed by gangs of thieves and evildoers.

Theft of cattle valued at more than $100.

Swindling or obtaining money under false pretences.

Injuries inflicted against individuals, which injuries may result in the loss of a limb or any physical deformity which might prevent the victim from gaining a livelihood.

The defendants in the cases of homicide, theft, obtaining money under false pretences where a pardon has once been granted have no further right to such pardon in the case of their being found guilty a second time of the same offence.

The individuals found guilty of a new offence while enjoying the privileges of parole will lose this privilege and be committed to prison providing the offence committed is sufficient motive for such detention.

If the crime committed bears its particular punishment.

Wherever the presence of the accused is necessary in court, and the latter fails to appear an order for his arrest shall be given by the presiding judge.

In the case where the prisoner has been acquitted in the first case or the case suspended, he may be allowed his liberty with bail or caution.

The presiding judge may revoke at any time his decision concerning provisional liberty of the accused.

In the case of defendants who are too poor to furnish bond, and especially in the case of fathers of families, bond

will not be demanded providing witnesses of honorable standing will appear to testify to his character and previous good behavior.

The appeals from judicial decrees on provisional liberty may be determined 72 hours after the decision.

Judgments may be heard only in the headquarters of the district in the cases indicated by Law No. 83 of 1915.

Minors may be sent to a reformatory or school of correction instead of to a prison or detention house. In the case where there is no reformatory or school of correction the youth may be turned over to some society, agricultural association or industrial undertaking, or to some charitable person who will agree to subject him to disciplinary measures to the satisfaction of the presiding judge. When there is no reformatory convenient nor society or institution to take charge of the youth the judge will have him placed in a prison, but will have him separated as much as possible from the hardened criminals. If during the time of his detention a society or individual will come forward to take over the care of such youth, the judge will order him to be delivered up to any such organization or individual.

The following resolutions are revoked: Arts. 1563 of the Judicial Code, 341 and 350 of the Law 105 of 1890, and 158, 159, 160 and 162 of the Law 40 of 1907, 5 of the Law 54 of 1913, and 6, 12 and 24 of Law 83 of 1915. Become amended the following Art. 342 of the Law 105 and 16 of the cited Art. 83.

As soon as this law is in force the government will proceed to enforce its decisions.

Law No. 63 of 1918 (December 2). Regarding salt deposits.

The law applies to all national salt deposits to be developed exclusively for account of the government which will fix the price for the sale of salt at the place of despatch for the purpose of furnishing a good quality of the article to the public at a moderate price and at the same time furnish a source of revenue for the government.

The government to manage the salt pits directly or by delegation, in which latter case the commission paid by the government to the delegate may not exceed 5 per cent of the

amount received for the salt manufactured, and will exact sufficient security for the control of the salt pits. The government cannot renounce its authority to freely fix price of salt.

The law provides for the prices obtained from the salt deposits in various sections.

Art. 4 provides for the general superintendent of warehouses detailed personnel for each one, all employees to be under the charge of the Minister of Hacienda.

The law further provides the duties and responsibilities of the superintendent as well as the amount of salt to be kept on hand at the warehouses, and for the employment of an expert in the development of salt pits for the purpose of making a study of the same for the government.

All salt deposits now in the possession of individuals may continue in such hands in accordance with the provisions dictated by the government in the premises.

The law provides for import duty on salt brought from other countries. Also for the price and limit of same for salt furnished in the territory. Arts. 2 to 4 of Law No. 50 of 1917 and other contrary provisions are hereby nullified.

The executive is empowered to impose a tax of 3 cents per kilogram for salt imported at the Atlantic ports and consumers in the territory of the republic.

If the salt deposits do not produce sufficient for public consumption, the government is authorized to introduce foreign salt to be sold at the official warehouse.

E. B. N.

COSTA RICA.

LEGISLATION.

Congress Decree No. 8 (December 28, 1917, Gaceta, January 3, 1918) suspends operation of Law No. 73 of December 18, 1916, establishing an income tax. The following changes are made for the period mentioned:

10% on net profits of banks of issue, banking houses, bankers, loan agencies, pawnbrokers and all concerns who derive an income from loaning money in any form.

Branches of foreign banks pay 1% of the capital invested in the country.

10% on premiums derived from the national lottery.

2% on the gross amount of sales of all mercantile or industrial establishments paying municipal licenses, *except* plants for the elaboration of coffee, and all establishments which have a capital not exceeding 2000 colones.

¼% territorial tax on farm and city properties established by first and second paragraphs of Art. 11 of Law No. 72, of December 18, 1918.

If the entire amount of unimproved property of individuals or corporations in the republic should exceed 100 hectares, the tax shall be paid annually, in accordance with the following tariff:

¼% on the value of the first 250 hectares or fraction over 100 hectares.

½% upon all in excess of 250 hectares.

Art. 12 of Law No. 72 is also modified. The proceeds of the territorial tax thus modified will be divided in two equal parts—one-half being applied to the highway fund and the other half to the revenues of the state, together with the proceeds of other taxes, provided for by this law, for the duration of the abnormal circumstances of the public treasury.

Art. 5. All persons proving their income to be less than 3000 colones are exempt for the period of six years (from the publication of this law) from the payment of the territorial tax.

Art. 6. No exemption shall relieve the beneficiary from the obligation of presenting at the proper office a declaration of his personal property and real property, nor from furnishing such office any information desired.

Art. 7. Municipalities, and other national or municipal authorities of the republic shall make each year a list of the taxpayers and furnish all data needed by the territorial tax collector's office.

Art. 8. Provision of Art. 29 of Law No. 72 is suspended and law governing highway taxes, of August 8, 1898, and

its modifications of August 9, 1899, are put in effect, but only respecting such persons as are by virtue of existing law exempt from the payment of territorial tax.

Presidential Decree No. 1 (January 28, 1917, Gaceta, January 31, 1918) regarding passports. All persons desiring to leave the country must provide themselves 15 days before leaving with a passport, which shall be stamped in accordance with the fiscal code and issued by the Governor of the province where the interested party resides. The passport must have the name, nationality, place of birth, and the permanent place of residence of the traveler, his personal description, a photograph stamped and signed by the issuing authority, and the signature of the petitioner, or some indication if he does not know how to sign or cannot sign. The passport shall also show the place of destination referred to, the object of the journey, and the name of the port or frontier from which he expects to leave.

Children under 18 years traveling with parents, tutors or guardians need only inscribe their names and ages on the passports of the persons accompanying them.

Passports must be vised five days before leaving by the director-general of police of San Jose, or the comandantes of police of the other provinces.

After March 1 next no passports will be issued to foreigners who do not present the document referred to by Art. 9 of this decree.

Official passports will be issued by the Minister of Foreign Relations, and do not require the vise of the police.

All foreigners entering Costa Rican territory must bring passports identifying them. These documents must be issued by the proper authorities of the country from which they proceed or by diplomatic or consular representatives thereof.

Every foreigner upon reaching a port or the frontier of Costa Rica must present his passport to the proper authority or he will not be admitted. Within eight days following his entry in Costa Rica he must present his papers to the Governor of the province where he is to reside, so that he may be inscribed in the registry of foreigners.

Foreigners without passports will not be allowed to enter Costa Rican territory, or those who have not complied with

the provisions of Art. 4. Nevertheless, under special circumstances, which shall be decided by the authority at the port of entry, where the individual has been unable to provide himself with a passport he will be admitted to the country if his entrance is not prohibited by provisions of Art. 5, or other analogous provisions.

Foreigners actually residing in the country, either transiently or with a fixed residence, must be registered in the foreign registry, and if not registered in their respective consulates they must present themselves for this purpose, provided with authenticated documents of their identification, etc.

Upon inscription in the register the interested party will be given a registration card, which must be kept by him to present to the authorities at any time requested.

The Governors will send to the office of the chief of police of San Jose every eight days a report of the registrations. The police authorities may demand of every foreigner the exhibition of his registration card, and if not obeyed will advise the Governor of this circumstance.

Owners of hotels, lodging houses, restaurants and boarding houses must request all foreigners stopping with them, if only for a night, to state whether or not they possess a passport. Owners or agents of public, mercantile, manufacturing or industrial establishments may not receive in their employ any foreigner who does not present a proof of his registration. The exception to these provisions will be foreign diplomatic and consular officials and their families, as well as their servants who live in their houses and who are natives of their respective countries, and whose names shall have been communicated by the said officials to the Minister of Foreign Relations.

Decree No. 1, House of Deputies (Gaceta, April 18, 1918). Fixing the price for articles of first necessity.

Congress Decree No. 11 (April 20, 1918, Gaceta, May 19, 1918) freeing from all import duties cattle from Nicaragua and prohibiting the exportation of cattle during the first year of the existence of this decree.

Decree No. 16 (La Gaceta, May 29, 1918). In consideration of the fact that the state of war existing in the country makes

it necessary to take precautionary measures, that the people of the country cannot give direct military co-operation, it is urgent to immediately promote the increase of the agricultural production for exporting food products as soon as possible to the nations fighting against Germany and its allies: that the inhabitants must strictly observe the duties which the situation imposes, preventing all acts that tend to debilitate the action of the state as a belligerent or to strengthen the enemy, therefore, it is decreed:

That all citizens of Costa Rica in particular and all nationals in general must contribute as much as possible in the defence and co-operation of the state during the course of the present war, giving to the constituted authorities the aid which for those ends may be required of them. The violators of this decree will be subject to the responsibilities of the penal code, of the code of military justice, and of the special laws, according to the case treated of, etc.

Congress Decree No. 10 (April 8, 1918, Gaceta, July 2, 1918). Payment of wharfage fees on all merchandise at the rate of one centime per kilogram, with the exception of that contained in paragraphs 1, 12, 93, 114, 130, 132 and 133 of the customs tariff.

Art. 2 provides exemption from fees, by reason of government contracts, for certain merchandise contained in various paragraphs of the customs tariff.

Art. 5 of customs tariff of December 23, 1911, is modified as regards imports.

Decree No. 20 (July 13, 1918, Gaceta, July 19, 1918).

Article 1. To be manager, agent or member of the board of directors of a bank, it is indispensable that the individual be stockholder of the bank in the amount of at least 10,000 colones, and that such stock be deposited with the bank for the term of his office, and for three months thereafter. No one may be a manager, director or agent of a bank at the same time that he is occupying a similar office for another banking house or a corporation engaged in the banking business.

Art. 2. A director may not reside outside the republic, and a director absenting himself for more than three months

during the term of his office will *ipso facto* cease to hold such office and his successor be immediately appointed. Cessation from his office does not free him from responsibilities encumbent upon him up to the time of his ceasing to hold such office.

Art. 3. No one may hold office as manager, agent, member of the board of directors, or employee of one bank and at the same time hold similar office in another bank.

Art. 4. No persons connected in direct or collateral line in a second degree of consanguinity or affinity may serve on the board of directors of the same bank. Nor may members of a board be at the same time members of the same stock company or partnership.

Art. 5. Confers two months' time after publication of this law for making necessary changes in the directory and administrative personnel of all institutions.

Art. 6. The office of manager is a personal one, and this office may not be delegated to another.

Art. 7. Imposes a fine of 2000 colones monthly for the period of failure to comply with these regulations.

E. B. N.

ECUADOR.

LEGISLATION.

"Registro Oficial," June 1, 1918. Decree, Article 1. The present edition of the Civil Act of instituting and prosecuting a judicial proceeding, arranged by the Academy of Lawyers of Quito, will be in force in all the territory of the republic from the first day of next July.

"Registro Oficial," September 30, 1918. Decree: The following reforms in the Law of Construction of the Railroad from Quito to Esmeraldas.

Article 1. That all the legislative decrees which determine the funds destined for the construction of the railroad from Quito to Esmeraldas are in force, those of September 6, 1913, Art. 2; October 4, 1913, Arts. 2 and 13; of October, 1916, Art. 2.

Art. 2. The territorial tax established by said decrees will be three per thousand annually from 1919, but the provinces

subject to this mortgage will during its existence be subject only to one per thousand for country roads and the general territorial tax.

Art. 3. Said funds will be collected directly by the treasurer of the railroad board and the collectors that same may name; and these funds will be invested in the same work, in conformity with the law and the dispositions of the government, in accordance with the board, who will issue the respective rules and regulations for the collection and inversion.

Art. 4. Every public functionary who violates the provisions of the previous article or who diverts the funds of the railroad for other objects or impedes in any manner the collection or investment of funds will be legally and financially responsible.

Art. 5. The board with the support of the government will be permitted to contract a loan for the construction of the railroad from Quito to Esmeraldas, utilizing revenues assigned for this work as a guarantee for the interests, service and payment of loan.

Art. 6. The railroad board will have special charge of making judicial and extra judicial representations conducent to the recuperation of the Pailon lands, actually occupied by a foreign company, in order that the railroad should terminate in those lands. If this restitution could not be obtained, the railroad must end at some other point of the coast not occupied by said company.

"Registro Oficial," October 4, 1918. Decree of Congress authorizing the coinage of nickle money abroad in the amount of one million sutres.

"Registro Oficial," October 11, 1918. Decree of Congress governing contraband material.

"Registro Oficial," October 28, 1918. Decree of Congress establishing certain modifications to code of civil procedure.

"Registro Oficial," October 30, 1918. Decree of Congress imposing law governing taxation of liquors foreign and imported.

"Registro Oficial," November 5, 1918. Decree of Congress modifying and adding to the law of interior administration.

"Registro Oficial," November 7, 1918. Decree of Congress establishing law governing tobacco, its cultivation, sale, taxes, etc.

"Registro Oficial," November 8, 1918. Decree of Congress modifying the Customs Law.

E. B. N.

GUATEMALA.

LEGISLATION.

"El Guatemalteco," May 17, 1918. Decree No. 985. Executive power authorized to contract for loans and pay off same during recess of National Assembly; also to fix taxes, change tariffs and modify budgets and make any arrangement he may deem expedient for the betterment of the economic condition of the country.

"El Guatemalteco," May 14, 1918. Executive power empowered during recess of assembly to continue the reorganization of existing legislation and to direct such laws and regulations as may be necessary for the public welfare in the different branches of the government.

"El Guatemalteco," July 4, 1918. Decree No. 737. On account of the belligerency of Guatemala with Imperial Germany, and in virtue of suspension of guarantees ordered by governmental Decree No. 735, the government considers it their duty to dictate all means necessary for the defence and maintenance of the rights which said state authorizes, among which is found in the first place the occupation of the interests of German companies lending public service in the country, etc.

"El Guatemalteco," July 8, 1918. Decree No. 739. That July 4, anniversary of the Independence of the United States, is a memorable date in the history of the world, and the most transcendental in the modern annals of America, as it is in memory of the glorious and fundamental act that determined in a decisive manner the emancipation of the colonies of the new world, etc. This day is, therefore, declared a holiday.

"El Guatemalteco," July 9, 1918. Rules and regulations for the execution of the governmental Decree No. 737.

"El Guatemalteco," July 15, 1918. Decree No. 740: That July 14, anniversary of the taking of Bastile, is a memorable date in history, making the triumph of democracy and the beginning of a new era of liberty and progress in the world, etc. This day is, therefore, declared a holiday.

"El Guatemalteco," July 27, 1918. The "exequatur" of German subjects is revoked, they having previously been recognized as foreign consular representatives, etc.

E. B. N.

MEXICO.

The following contribution is a review of the principal features of Mexican legislation since the time of the new Constitution of February 5, 1917, which went into effect in Mexico on May 1, 1917. This new Constitution has already been digested and reviewed by the present writer and another editorial contributor, in the April, 1917, number of the JOURNAL; and a rather extensive sketch of the same appears in the "Proceedings of the American Bar Association" for 1917. A review of some of the legislation adopted in putting into execution sundry provisions of the new Constitution was presented by this contributor before the Bureau of Comparative Law at the Cleveland meeting of the Bar Association and published in the JOURNAL for October, 1918. To these several publications reference is made for a fuller view of the Revolutionary Constitution and legislation than is here made, in order to avoid repetition of some matters which might come within the more limited scope of the present review.

Since the address above referred to was delivered, under the title of "The Mexican Revolution in Word and Deed," at the Cleveland meeting of the Bar Association (JOURNAL, October, 1918, p. 681), exception has been taken to it as presenting "very misleading statements," by a writer in the JOURNAL for January, 1919, p. 152, in a contribution entitled "Confiscation of Private Property of Foreigners Under Color of a Changed Constitution," the distinguished author of which essays to joust with the undersigned. With no purpose of polemics, but in justice to the subject in controversy and as introductory of the following references to the "petroleum" legislation of Mexico which has excited much debate and recrimination, a few cross-references to

Mr. Ira Jewell Williams' "Confiscation" complaint may be made in taking up a review of the petroleum situation in Mexico.

To the reader of my remarks in the October JOURNAL, it will be obvious that I made no "misleading statements," on my personal account, as I expressed no personal opinions at all, the article being made up in its totality of quotations from official Mexican documents, detailing the existing conditions in Mexico which led to the revolution, followed by extracts from like official documents and laws and decrees adopting legislation designed to meet and correct the evils complained of. This writer made no attempt to "enshrine Victoriano Carranza in the hearts of the American Bar as the George Washington of Mexico"; his words and deeds speak for themselves. The only allusion by this writer to such a parallel was in a very minor key of comparison, saying that Carranza, like Washington, was unanimously elected the first President of his country after his struggle to redeem his country. The American Ambassador to Mexico, Mr. Fletcher, in a recent statement published in press dispatches early in February, 1919, himself declares his confidence in the good faith and earnest efforts of President Carranza in initiating and carrying out radical reforms; declares his faith in the stability of the Carranza Government; and, with reference to the petroleum legislation, declares that no effort has been made to execute such laws in the hostile sense attributed to them by certain interested parties—as will appear in the following review of that legislation. As regards the complaint that this writer omitted to mention the fact of a certain public protest in Mexico, "in November, 1918," against venality of public officials, it suffices to say that my address was made in September, 1918, before such alleged occurrence. But it is just against this public venality that Mr. Carranza has most earnestly protested and worked, as is shown in my review of his "words and deeds," in that address.

THE PETROLEUM LEGISLATION.

It is true, as Mr. Williams quotes, that by the Mexican Mining Law of 1884, petroleum existing under the surface of the ground was declared to be the exclusive property of the owner of the soil; while, on the other hand, nearly all mineral ores, as gold, silver, copper, etc., were declared "of the exclusive property of the

nation," regardless of the surface ownership by private persons, none of which latter could be mined or worked " without previous concession " by the government. This is ancient Mexican policy, and is perpetuated in the Mining Law of June 4, 1892, and in the Mining Law of November 25, 1909, as may be read in my " Compendium of the Laws of Mexico," 1910, Vol. 2, p. 570. The Constitution of 1917, Art. 27, followed exactly this ancient polity in declaring certain subsoil minerals to be of the property of the nation, but added to this list, as correctly quoted by Mr. Williams: " Petroleum and all hydrocarbons, solid, liquor or gaseous." He says this was done " in the teeth of the assurance contained in Art. 14, declaring no law should be given retroactive effect to the prejudice of any person, and that no person should be deprived of life, liberty, property, possessions or rights without due process of law, etc. On the face of these constitutional provisions there is nothing whatever to even suggest that Art. 27 conflicts with the guaranties of Art. 14, or was intended to apply to or interfere with vested rights acquired with respect to petroleum *in situ*, with priority to the taking effect of the Constitution on May 1, 1917, or otherwise have any " retroactive effect " at all. To give such Art. 27 a prospective operation, applicable only to future acquisitions of oil lands, while it might impose some limitations upon the facility of oil operators, could not be either illegal or oppressive, and would simply put oil operations on the same basis as all other mining operations in Mexico from time immemorial—private ownership of mineral properties having never been known for long years, if ever, in that country. It is to the laws putting into effect the provisions of Art. 27 of the Constitution, that any such " retroactive effect," if any, must be looked for. Mr. Williams, thus represents the origins of the dispute which arose as to the " attempt to confiscate foreign-owned oil properties ":

" The executive, although vested with no authority except in fiscal matters, proceeded to promulgate petroleum decrees putting into effect the confiscatory provisions of Art. 27 of the Constitution. By the Carranza decree of February 19, 1918, it was provided that all petroleum properties must be made the subject of *manifestations* which must be filed on or before July 15, 1918. By the filing of such *manifestations*, the owner of the property became entitled to a *preferential right* to *denounce* the properties. By such denouncement, the denouncer would secure a right

similar to that obtained under the mining laws in respect to precious metals. Failure to file the manifestations renders the property subject to denouncement by the first comer. If the owner fails to manifest, or having manifested, *fails to denounce, his property is lost according to the terms of the decree.* Any one may take it from him as if it were ordinary mining property. On the other hand, if the manifestations were filed the owner's prior right was gone, he was in under the scheme, and all he could do would be to file a denouncement, whereupon he exchanged for his former right of ownership a mere mining right which could be legislated out of existence or rendered valueless by state action. And foreign corporations were not even given the right to 'denounce' their own properties."

Thus the case is stated against the decree of February 19, 1918. It therefore becomes of interest and importance to examine the terms of that much discussed decree. Protests of several foreign governments, including the United States, were made against—in the language of the protest handed in for the latter by Ambassador Fletcher—"the apparent attempted separation of surface and subsurface rights in its decree . . . . by severing at one stroke the ownership of the petroleum deposits from the ownership of the surface." (Protest of U. S. State Department, dated April 6, 1918.) Following is the

Petroleum Decree of February 19, 1918 (as promulgated in the "Diario Oficial" of Mexico, Vol. VIII, No. 48, of February 27, 1918): "Art. 1. There is established an impost upon petroliferous lands and upon petroleum contracts which have been executed previously to May 1, 1917, and which have for their object the leasing of lands for the exploitation of carbides (carburos) of hydrogen, or the permit (permiso) to do this by onerous title (*i. e.*, upon making compensation for the permit)." Art. 2 fixes the rates of taxes on the contracts mentioned in Art. 1, based upon the annual rentals stipulated in such contracts; and Art. 3 fixes the rates payable upon the royalties stipulated in such contracts. "Art. 4. Oil properties exploited by the owners of the superficial soil are subjected to an annual rental of five pesos per hectare, and also to a royalty of 5 per cent of the products, in cash or in kind (en efectivo ó en especie), as may be determined in each case by the Department of Hacienda (Treasury)." Arts. 5 to 13, inclusive, make provisions for the manner of determining the values for applying the rates, the place and manner of pay-

ment, etc., not necessary to quote, as having no bearing on the question in dispute—but all being purely "fiscal matters" within the delegated authority of the executive, as indicated by Mr. Williams. Art. 9 first refers to "manifestations," providing that "all persons subject to the imposts established by this law must present, during the first 15 days of each bimester a manifestation, in the form prescribed by the General Stamp Tax Office, stating the rentals, production, and other data necessary to calculate the imposts, such manifestations to be presented in the local stamp tax offices." All the trouble arises over the following Art. 14:

"The owners of lands who wish to exploit on their own account the petroliferous deposits of the subsoil, and who have not executed any petroleum contract, as well also the last concessionaires of the right of exploitation in the contracts mentioned in Art. 1 of this law, shall make a manifestation within the three months following the promulgation hereof, attaching thereto a certified copy of their contracts of purchase, of lease, or of any other kind, before the Department of Industry, Commerce and Labor, which department must revise the manifestations and reject those which contain unjustified data (datos sin justificación). After this period, every petroleum property shall be considered vacant which shall not have been registered in the form prescribed in this article, the denouncement and exploitation of the same being governed by the regulations which may be issued, which regulations shall determine who are the persons subject to pay the imposts." The remaining Arts. 15 to 20, inclusive, refer simply to the forms of contracts as public or private, the places of payment of taxes, surcharges for non-payment in time, the distribution of the taxes, infractions of the law, and that it shall take effect on the day of its promulgation: nothing further concerning the matters in controversy.

Whatever may be the real scope and meaning of Art. 14, *supra*, the reader may judge whether it justly admits the momentous and confiscatory effects attributed to it by Mr. Williams. Let a careful comparison of the article and of the criticism be made, and the legal conclusions drawn. But it is clear that the last clause of the article, declaring "vacant" the properties "not registered in the form prescribed in this article," and making them subject to "denouncement," would be a violation of all the terms of Art. 14 of the Constitution, prohibiting retroactive laws and the taking of property without due process of law. However, it seems that Art. 14 of the law makes no definite prescription in

regard to "registration"; the three months' period named in the article has invariably, by subsequent decrees, been extended so that it has never expired; and, as Ambassador Fletcher publicly stated, "no attempt has ever been made to enforce the article." The motives and reason for embodying such an article in the decree need not be too harshly judged: let it be remembered that even Acts of Congress of the United States have sometimes been rather harshly criticized and held to be unconstitutional by the Supreme Court of the United States. The important feature of the whole matter is, that Art. 14 of the decree is mere "*brutum fulmen*"; has frightened some good oil promoters, but has done no real harm to any interests—and, what is more, has been recognized as wrong in principle and in law by President Carranza himself, and he has submitted to the Mexican Congress, where it is now pending, a bill expressly excepting vested rights from the operation of the provisions of Art. 27 of the Constitution and of the previous decree—as will be more fully stated below.

The *reglamentation* of Art. 14 of the decree of February 19, 1918, was issued under date of July 8, 1918 (Diario Oficial, July 13, 1918, Vol. IX, No. 64). This regulation does expressly declare "free land" and subject to denouncement petroleum properties not "manifested" according to Art. 14 of the decree of February 19, 1918, as defined and extended by decree of May 18, 1918, or having been manifested, not denounced within the time limited. The regulations provide detailed procedure for the denouncement and acquisition of concessions or rights for exploitation of petroleum properties, too lengthy to be here reproduced.

Circular No. 1 of the Treasury Department (Hacienda), dated April 26, 1918, addressed to all companies and persons interested in the petroleum industry in Mexico, recites that it is the desire of the government "to arrive at a solution which, without injuring private interests legitimately created, may best serve the general interests of the country," and invites all interested to send in written statements of "all observations which in their judgment are proper to be taken into consideration in the study of the reglamentation of Art. 27 of the Constitution.

Decree of July 31, 1918 (Diario Oficial, August 6, Vol. IX, No. 84) repeals the decrees of February 19, 1918, and May 18,

1918, and enacts a new law in form and substance a combination of the two decrees which are repealed. Art. 14 of the new decree is in substance the same as Art. 14 of the decree of February 19, 1918, above quoted, with only the following changes of language: "The owners of the surface land who have not leased or otherwise contracted for the exploitation of the natural carbides of hydrogen," shall make the manifestation "within the first 15 days of August," and "in the terms prescribed in Arts. 16 and 17 following"; the other provisions of Art. 14 being the same as in the former decree. Arts. 16 and 17 prescribe the form and contents of the "manifestations" to be presented by owners and concessionaires respectively.

Decree of August 8, 1918 (Diario Oficial, August 12, Vol. IX, No. 89), repeals the regulations of July 8, 1918, *supra*, and prescribes a new series of regulations of the decree of February 19, 1918, as amended by the decree of July 31, 1918, and retains the provisions of the former regulations in regard to properties not "manifested," or not thereafter "denounced" becoming "free lands" and subject to denouncement by third persons.

Decree of August 12, 1918 (Diario Oficial, August 15, 1918, Vol. IX, No. 92). This law makes a saving in favor of petroleum properties in exploitation in which investments of money have been made. "Art. 1. Recognized petroliferous properties in which some capital has been invested for explorations or exploitations of petroleum, and which have not been manifested up to the 15th of this month, in accordance with the decree of July 31, 1918, are not subject to denouncement." Art. 2 provides that "the right to the exploitation for petroleum of these properties shall be acquired by means of special contracts entered into with the Department of Industry, Commerce and Labor, in accordance with regulations to be issued to that effect," pending the enactment of an Organic Law under Art. 27 of the Constitution which shall determine the form of granting concessions relating thereto. "Art. 3. The present holders or exploiters of these properties, who have not made the manifestations prescribed by the decree cited, shall continue to possess and exploit said properties, upon the payment to the federal treasury of an annual rental of five pesos per hectare and a royalty of 5 per cent of the production, pending the issuance of bases for the making of the respective

contracts; but if the interested parties make proof that they are in possession of the properties mentioned under contracts executed before the first of May, 1917, they shall continue to possess and exploit them, with the obligation to pay the impost established in the said decree, for petroleum contracts." "Art. 4. The present exploiters of said properties may continue the exploitation of the works already begun and authorized, upon compliance with the requisites prescribed in the preceding article, but they will not be permitted to begin new works until after the execution of the contracts by which the right to exploit said properties is granted to them." Art. 5 relates to the manner of paying the imposts as provided in the previous decree. "Art. 6. The payment of the imposts established by this law will give to the payers the right of preference for the execution of the contracts for the properties mentioned in Art. 2." "Art. 7. The failure to pay the imposts established in Art. 3 will entail the loss of the right of preference which is acquired through such payment, and that such property shall be declared free, or that the preference be granted to another interested person." Art. 8 prescribed the use of "economic coercive" means to enforce the fiscal obligations imposed by the law, which goes into force on August 16, 1918.

"*Bill of an Organic Law of Art. 27 of the Constitution* in the Matter of Petroleum," submitted to the Congress by the executive, under date of November 22, 1918 (and published in the "Diario Oficial," November 27, 1918, Vol. IX, No. 73). This bill or "Iniciativa de Ley" contains 125 articles and six "Transitory Articles"; and is designed to be a complete re-enactment of all laws on the subject, and in its preamble recites "that the growing importance of the petroleum industry imposes the necessity of giving preference to the solution of all the problems connected with it, for the purpose of intensifying its exploitation by the investment of new capital; and that this can only be realized by the establishment of a legal system which shall consolidate past investments and facilitate future investments." The "Transitory Article" 2 of the bill is a complete answer to all questions of "retroactive effect" and "confiscation," and thoroughly saves all "vested rights" acquired previous to the new Constitution. It is proposed: "Art. 2. Lands upon which capital has been

invested previously to May 1, 1917, for petroleum exploration or exploitation, are not denounceable, nor are they subject to the relative provisions of this law. Hence the possessors of such lands (owners or concessionaires), will make proof of their rights of possession, before the executive, within a period of three months after the promulgation of this law"; paying only the duties provided by law. "Art. 3. The owners of lands or the concessionaires under contracts prior to May 1, 1917, who have not invested capital in the petroleum exploration or exploitation, shall enjoy the preference, during one year after the date of issuance of this law, to denounce the underlying properties (fundos subyacentes), provided that they prove their rights, before the executive, within three months after the date of this law. When a single property has been denounced by different concessionaires, the title shall be issued to the concessionaire protected by the contract of latest date."

The Mexican Congress having adjourned without enacting into law the foregoing bill, President Carranza, under date of March 8, 1919 (Diario Oficial, March 11, Vol. XI, No. 60), issued a decree convoking a special session of Congress for May 1, 1919, to take action, among other matters: "III. Enactment of Organic Laws upon Petroleum and Combustible Minerals, in accordance with the bill sent to Congress on November 22, 1918," by the Executive.

Redemption Extraordinary of National Honor.—A very curious example of "high finance" dexterity and the "redemption of the national honor" without cost to the redeemer, is illustrated by an executive decree issued on March 29, 1917, just before the constitutional régime went into effect, and reaffirmed by a like decree of May 23, 1917, shortly after the Constitution became operative. It is necessary to recite that some hundreds of millions of pesos of revolutionary paper money had been issued by the Carranza authorities, of a type called "infalsificables" (non-counterfeitables), and its forcible circulation as legal tender at par often decreed; this large amount of emission had been solemnly decree to be "a sacred debt of honor of the nation," to be faithfully redeemed peso for peso of value. (When the writer was in Mexico, in December, 1916, a total stranger on the train gave him a handsomely engraved $50 note of this issue,

to demonstrate its utter valuelessness.) The government was struggling with this situation and to get the scant coin there was in the country, required all taxes and import and export duties to be paid in gold. The government, in this dilemma, hit upon a remarkable financial expedient, which deserves to be studied, if not imitated.

In the decree of March 28 it recited: "In order to prepare for the reorganization of the national credit, it is absolutely necessary to reduce as far as possible the amount of 'infalsificable' paper money held by the people, and which, although not in circulation in the market, yet represents a heavy nominal debt charged against the nation. The redemption of this paper money can be made in such way that without implying a repudiation of a legitimate debt, it will not disturb the present monetary circulation. The most practicable form of redeeming this money is to receive it in payment of certain imposts which must be paid by those who have the best facilities for acquiring it. In view of the next to nil value of this paper, additional imposts can be established payable in this paper money without imposing too great a burden upon these required to pay them. Therefore, beginning on April 1 next, every payment in the nature of duties on importation and exportation and of stamp tax on the production of petroleum and ores, shall be paid together with a surtax of one peso 'infalsificable' for every peso in gold, or fraction thereof, which is payable according to the rates now in force."

As most if not all of such import and export duties and taxes on petroleum and ores are paid by *foreigners,* and the "infalsificable" was held by the "people," the foreign taxpayer had to buy up the worthless paper at whatever price the "people" could exact from him—and, most beautiful of all, the government "redeemed" the sacred national honor and its big "legitimate debt," without a cent of cost to itself, and the foreigner "paid the freight."

Sales of Realty.—Decree of April 3, 1917, abolished the form of contract of sale of real property containing clause of resale (contrato de venta con pacto de retroventa), which is a common form of mortgage in which the borrower "sells" the estate to the lender, who obligates himself to "resell" the same to the former upon the payment of an agreed amount, usually the debt and

interest. This species of real contract has existed from the ancient Spanish law.

Crimes of the Press (Presidential Decree of April 9, 1917).—This is a lengthy law regulating, provisionally, the Arts. VI and VII of the Constitution which guarantee freedom of speech and of the press, except when the publication constitutes an "attack on private life, against morals, or against public order and peace." I. Attacks on private life consist of: 1. Substantially what is defined as libel in American law. 2. Similar imputations against the memory of a deceased person, with the purpose or intention of hurting the honor or good repute of the living heirs or descendants of the deceased. 3. Reports, in newspapers or otherwise, of proceedings in the courts in civil or criminal matters, which are false in fact or alter the truth, or unwarranted comments on the facts, with intent to injure any one. 4. Publications prohibited by the law which compromise a person's dignity or repute, and expose him to public discredit. II. Attacks against morals consist of: All publications, oral, written or which in any manner defend or excuse, advise or publicly propagate vices, wrongs or crimes, or make apology for them or for their authors; all manner of speech, signs, songs, exhibitions or representations of offensive, indecent, lewd and obscene matters, and all writings, pictures, etc., of the same kind. III. Attacks on order or public peace consist, in summarized statement, of: 1. Malicious representations made publicly by any possible means, oral, written, printed, cartoons, "movie" pictures, phonographs, etc., made for the purpose of discrediting, ridiculing or destroying the fundamental institutions of the country, or which insult (se injuria) the Mexican nation or the several states composing it. 2. All expressions made public in any manner, as stated in paragraph 1, which directly or indirectly advises, incites or provokes the army to disobedience, rebellion, desertion, or neglect of any other duty; which advises, incites or provokes the people in general to anarchy, mutiny, sedition or rebellion, or to disobedience of the laws or of the lawful orders of authority; which insults the authorities of the country with intent to bring them into public hatred, discredit or ridicule; or with like intent attacks any public bodies, the army, the national guard or any of their members, with respect to their functions; or which insults friendly

nations, their sovereigns or heads of government or their lawful representatives in Mexico; or which advises, incites or provokes the commission of any particular crime. 3. The publication or propagation of false or garbled news in regard to current events, capable of perturbing the peace or tranquillity of the country or any part of it, or to cause the rise or fall of the prices of goods and merchandise, or to injure the credit of the nation or of any state or municipality, or of legally instituted banks. 4. Every publication prohibited by law or by authority for the public interests, or made before it is permitted by law to be made public. Any such publication is considered malicious when it is in terms offensive or when it necessarily implies the intention of offending; but it is not considered malicious, although offensive in terms, in cases where the law permits such publication, and when the accused proves that the acts imputed to the complainant are true or that he had good reason to believe them true and that he published them for honest purposes. In no case can criticism of a public official or employee be deemed criminal if the facts alleged are true and if the comments made upon them are reasonable and are induced by the alleged facts, provided that insulting phrases or words are not employed. Art. 9. It is prohibited to publish: 1. Pleadings or charges filed in a criminal case before a public hearing is had of the same. 2. To publish at any time without the consent of all interested parties, pleadings, charges, or any other documents in prosecutions for the crimes of adultery, attacks upon chastity, obscene crimes, rape, and attacks upon private life. 3. Also any pleadings or documents in cases of divorce, proceedings relating to paternity or maternity, annulment of marriage, acknowledgment of children, or in other cases in which such matters may come up. 4. To publish any legal proceedings or acts which by force of law or by judicial order should be kept secret. 5. To initiate or raise publicly subscriptions or pecuniary aids to pay fines imposed for violations of law. 6. To publish the names of jurors, the way they have voted, or the private discussions had by them in arriving at their verdict. 7. To publish the names of soldiers or gendarmes who take part in public executions. 8. The names of officers of the army, navy and auxiliary forces of rural police to whom is entrusted a secret commission of the service. 9. The names of victims of criminal

assaults, indecencies or rape. 10. To censure a juror for his vote in the exercise of his functions. 11. To publish any secret military plans, data, etc., or any document, instructions, etc., of the Department of State before the same are published in the official organ of the government or in special bulletins of the departments. 12. To publish insulting or offensive words or expressions used in the courts and tribunals or in the sessions of public official bodies. Penalties of fines, imprisonment, and discharge from office of public employees guilty of violations, are provided. Art. 13. All persons having or hereafter establishing any printing house or press, etc., must give written notice of the same to the municipal president within eight days, stating the names and addresses of all owners, managers, etc., and of any changes in the same. Art. 15. Before it can be put into circulation in any way, every publication, poster, handbill, etc., must bear the name and address of the printer, engraver, etc., the date of the printing, and the name of the author or person responsible for the publication. Art. 27. Periodicals are obligated to publish gratuitously corrections or replies which public authorities, employees, or private persons wish to make to statements made about them in articles, editorials, paragraphs, reporterial notes, or interviews, provided such answer is made within eight days after the publication and does not exceed in length three times that of the article replied to, in the case of public authorities, or twice the length in case of private persons; and that it does not contain improper matter. The publication of the reply will be made in the same place and in the same size of type and be otherwise similar to the original publication. A number of following articles provide penalties for the violation of the several provisions of this law.

Law of Family Relations (April 12, 1917).—This is the most elaborate piece of legislation of many years in Mexico; it is in the form of a presidential decree, consists of 555 articles, and makes a little octavo volume of 128 pages; hence it is impossible to make other than a very meager summary of some of its principal provisions. It is preceded by 16 pages of "exposition de motifs," and is in substance a radical amendment of all that portion of the civil code governing family relations in general,

marriage, divorce, children, patria potestad, filiation, adoption, support, guardianship, etc.

The most radical reform of the Mexican law is in the adoption of absolute divorce instead of the simple "separation of bodies" which has prevailed since Spanish law has existed. This subject has been one of the first magnitude in the revolutionary program, and was first given force of law by a decree of the first chief of the revolution in the early days of his administration, and has been several times elaborated until the present fundamental law has ingrafted it permanently upon Mexican legislation.

Chapter I treats of "The formalities for celebrating the contract of marriage." The contracting parties must present in person or by attorney in fact before the judge of civil status, a petition in writing, stating their names, addresses and all possible personal data, like data as to their respective parents, the declaration of the parties that it is their will to be lawfully married, and other data required by the law; they may also file therewith the certificates of two or more licensed physicians to the effect that the parties have no impediments to marriage, being of sound mind and body. The petition must be signed by the parties, by the parents of either if a minor, and by two witnesses who have known the parties for at least three years, and who must certify to their personal knowledge that the parties are of lawful age and have no impediments to marriage. Upon being satisfied that the parties are qualified within the law, the Judge will fix a day and hour within the following eight days for the celebration of the marriage; at which time the parties will appear before him in person or by specially empowered attorney, with two witnesses for each party, and the parents or guardians of the parties, if they have such, and if they wish to attend the ceremony. The judge will read all the documents on file to the parties, question them on many matters, ask if they wish to be married, and upon their affirmative reply, will declare them united in the name of the law and of society, with all the rights and prerogatives which the law grants and with all the responsibilities which it imposes. Thereupon the judge draws up the formal "act" of marriage, setting out all the particulars and formalities above noted and many others, and all the parties, witnesses, and others taking part will sign the act, together with the judge. The judge is vested

with full inquisitorial powers and it is his duty to require that all the matters required by law to be stated shall be fully proven under oath, and if satisfied that either of the parties is not of legal age or has any legal impediment, he must refuse to perform the ceremony. For the marriage petition and for celebrating the marriage the judge shall receive the sum of five pesos each, which amounts will be paid into the municipal treasury; but persons notoriously poor are exempt from payment of fees.

Chapter II treats "Of marriage and of the requisites necessary to contract it"; and declares: "Marriage is a civil contract between a single man and a single woman who unite themselves in a dissoluable bond for the purpose of perpetuating their species and of aiding each other to bear the burden of life." The promise of marriage does not obligate either party to celebrate the contract, but if the promise is in writing, the party failing to perform is liable for the losses and damages occasioned to the other party. A number of legal impediments to marriage are stated, mostly similar to like impediments in American law, with no limitation of degrees of consanguineous relationship in direct line, nor in affinity; in collateral consanguinity the impediment, among those of equal degree, extends to brothers and sisters of whole or of half blood; in unequal degree, to uncles and nephews and vice versa, if within the third degree and without dispensation. Habitual drunkenness, incurable impotency on account of physical defect to enter into the marriage relation, syphilis, insanity and any other chronic and incurable disease which is contagious or hereditary, are impediments to marriage. No man under 16 or woman under 14 years of age can contract marriage, except that in special cases and for serious causes the Governor may grant dispensation provided that the man be at least 12 years of age. Neither man nor woman under 21 years of age can marry without consent of both parents, or grandparents, or guardians, or if none of these, then the judge of first instance of the residence of the minor may grant consent. Marriages celebrated between foreigners outside of Mexico and which are valid according to the laws of the country where celebrated, are valid for all civil purposes in the federal district and territories. (This law is a federal law only effective in the places named; state laws usually follow closely or copy literally the federal laws.) Marriages

celebrated in foreign countries between Mexicans, or between a Mexican man or woman and a foreign man or woman, are valid for civil purposes in Mexican territory, if it is made to appear that the marriage was celebrated with the forms and requisites of law of the place of celebration, and that the Mexican has not contravened the provisions of this law in regard to impediments, aptitude to contract marriage, and consent of his ascendants. In cases of urgency not permitting recourse to the Mexican authorities, such consent and the dispensation of the impediments of non-age or relationship may be granted by the minister or consul of Mexico in or nearest to the place where the marriage is to be celebrated.

Chapter III treats of "Relationship, its lines and degrees"; Chapter IV "of the rights and obligations created by marriage"; Chapter V "Alimentos or support"; Chapter VI "Of divorce." This institution, a social necessity and very popular in United States, has been unknown heretofore, à vinculis, in Mexico; hence Art. 75 of the law defines it fully: "Divorce dissolves the bonds of matrimony, and leaves the parties free to contract another." The causes for divorce are 12 in number, among which may be mentioned: Adultery: at all times when committed by the wife; but as against the husband, only when one of the following circumstances concurs: that the act was committed in the conjugal home; that there is concubinage between the husband and the "other woman"; that scandal or public insult to the wife has been occasioned by the husband; that the adultress has mistreated or caused the mistreatment, by word or deed, of the lawful wife. Incapacity of either party to fulfill the purposes of marriage, or is afflicted with syphilis, tuberculosis, incurable mental derangement, or any other incurable chronic disease which is also contagious or hereditary. Abandonment for six consecutive months. *Mutual consent.* If either party sues the other for divorce or annulment of marriage, for a cause not proven or insufficient, such other party may in turn sue for divorce. In case of mutual consent of the parties to be divorced, they must join in a petition to the judge, in no event within one year after the marriage, and must present with the petition an agreement providing for the disposition of any children and the settlement of the property rights of the parties. The judge of first instance will thereupon

advise the judge of civil status, who will post notice on his bulletin, and summon the parties to a meeting for conciliation, at which he will endeavor to bring about the reconciliation of the parties, and will satisfy himself of the entire freedom of action of both parties in seeking divorce. If the judge of civil status is unsuccessful in reconciling the parties, two further meetings, for the same purpose, and with one month interval, will be called at the petition of both parties. If after three unsuccessful meetings, the parties persist in their purpose to be divorced, the judge will approve the arrangements, with such modifications as he may deem proper to make, and with hearing of the public attorney, and will take care that the rights of the children and of third parties are protected. At any time pending these proceedings the parties are free to come together by mutual consent; in this event they cannot again seek divorce in the same manner until one year after their reconciliation. Divorce can only be demanded by the party who has not given cause for it, and within six months after having knowledge of the facts upon which the demand is founded.

Chapter VII treats of " Void and illicit marriages "; Chapters VIII and IX of " Paternity and filiation of illegitimate children " and " Of proofs of filiation " of the same; and the following three chapters of related subjects. Chapter XIII treats of "Adoption," which is now for the first time admitted into Mexican legislation. Only unmarried persons can freely adopt minor children; if married, they must join in consent to adopt the minor as the child of both; the marrried woman can only adopt a child as her own by permission of her husband; the husband can adopt a child as his own without permission of his wife, but in such case he cannot bring the child to live in the conjugal home. The minor must be at least 12 years of age, and the consent must be had of the person entitled to the patria potestad over the child, or of its guardian, and if neither of these, then of the judge of the place of residence of the minor. The adoption may be vacated and rendered without effect at any time upon application of the party who made the adoption, with the consent of all persons who consented to the adoption being made. Other chapters on patria potestad, guardianship, absence, etc., follow.

Organization of the Departments of State (Law by Executive Decree, April 15, 1917).—For the dispatch of the business of the federal administration, six secretaryships and three departments are created, as follows: Secretariats of State, of Treasury and Public Credit, of War and Navy, of Communications, of Fomento (Promotion), of Industry and Commerce; the Departments are: The Judicial; Universitary and Fine Arts; Public Health. By a later decree the distribution of all administrative business and affairs is made in detail between these several organizations.

Organization of the Government of the Federal District and Territories (Law by Executive Decree, April 13, 1917).—The law is for the government of the federal district and the federal territories of Mexico, and provides in several chapters for the form of government, the appointment and powers of the governors and other officers, for public charities, for primary public instruction, with permanent professors, for the public safety, for roads and public works, for municipal administration, for justice and public officers of justice, and for the responsibility of public officials.

Organic Law of Public Education for the Federal District and Territories (Law of April 14, 1917).—A comprehensive law providing for a General Board of Public Education and for the establishment of kindergartens, primary, preparatory and normal schools, and commercial, industrial and special schools, prescribing the courses of study, a school year of 10 months from March to December; that instruction in all official public schools and in private primary schools shall be laical; providing a school medical service for the compliance with sanitary laws and rules of hygiene; requiring that private schools comply at least with the same program as the official schools; teachers of the public schools to be appointed and removed only upon approval of the President, and to receive pensions for sickness incurred in the service and after 20 years of good service; providing for the publication of an official "Review of Education"; elementary primary education is obligatory for children of both sexes between 6 and 15 years of age, and a fine of 500 pesos and imprisonment is provided for parents, guardians and others who fail to enforce the attendance of the children under their care.

Extraordinary Powers in Finance (Law of May 8, 1917, confirmed by Law of December 30, 1918).—Until the Congress shall have passed laws governing for the future the federal public treasury, extraordinary powers are granted to the President of the republic in the matter of finance; the President being required to report to Congress upon the use which he may make of the powers so granted. By law of December 30, 1918, the powers so conferred upon the President were ratified, and the use he had made of them approved by the Congress, together with all the decrees which he had promulgated on the subject (with exception of one of August 22, 1918, imposing an import duty on paper); and the President was further empowered to make such amendments as he deemed proper in the tariffs on imports and exports, provided the same be of a general character and not in the form of concessions to private persons.

Treaty Relative to the Free Exercise of the Profession of Medicine, between Mexico and Japan, April 26, 1917.—By this treaty the nationals of each of the two countries may freely exercise in the territory of the other the professions of physician, pharmaceutist, dentist, midwife and veterinarian, provided that they shall have been duly licensed for such profession by competent authority of their own country. The license issued in the original country must be presented, accompanied by translation, to the proper authorities of the other country where the profession is to be exercised, and by a certificate of identity of the holder of the license, all duly authenticated by the Minister of Foreign Relations of the country of the holder and by the diplomatic or consular representative resident therein of the other country, and by the foreign minister of the country in which the profession is to be exercised. The treaty is effective for 10 years, and it may then be denounced by either party.

Organic Law of the Federal Judicial Power (Law of July 1, 1917).—The power of deciding controversies involving constitutional questions, or laws based on the constitution, or treaties with foreign nations, is vested in the following tribunals: The Supreme Court of Justice of the nation; the circuit and district courts; the popular jury, and by the courts of the states, the federal district and the territories in the cases authorized by the Constitution, Art. 104, Sec. I. The Supreme Court is composed

of 11 magistrates, who shall always sit *en banc,* but eight may constitute a working quorum, and shall hold two terms each year, from June 1 to November 20, and from December 1 to May 20; it shall sit every day during these terms, its sessions to be public except in cases where public morals and social interests require otherwise. The Supreme Court has original jurisdiction: of controversies between two or more states; between the federation and one or more states; of all to which the federation is a party; of conflicts between the powers of a state as to the constitutionality of their acts; of questions of jurisdiction between federal, state, territorial, etc., courts; of writs of amparo for violation of constitutional guaranties; of impediments, challenges and excuses of the circuit judges, and of other matters as to which jurisdiction may be conferred on it by law. The jurisdiction of the Supreme Court in second instance, and its administrative duties need not be detailed, nor the division of jurisdiction between the several circuit and district courts. The jury, which is provided for the district court, is composed of seven jurors, drawn from a list made up each year by the municipal presidents or mayors of the district; service is compulsory, is incompatible with any other public employment, and no professor of instruction in active service nor the minister of any form of worship is eligible for jury service.

Labor Legislation—Arbitration Committees (Law of November 17, 1917).—The Governors of the federal district and territories are required, within their respective jurisdictions, to summon all employers and laborers to appoint each one representative for each industry, and such Governors will each appoint one representative of the government; also making the appointment for any of the other parties who fail or refuse within three days to appoint its own representative. In any industry which is unionized, the union, if it constitutes a majority, will appoint the labor representative; otherwise, the representative will be chosen by majority vote. The representatives so chosen shall constitute the central committees of conciliation and arbitration of the federal district and territories, which shall have plenary jurisdiction of all controversies between capital and labor, which affect all the industries within their respective jurisdictions. When the conflict affects only one or a few industries, it shall be settled by

a committee composed of representatives of the particular industries concerned and by the representative of the government.

When the representative of the government shall have knowledge of a conflict, he shall on the same day convoke the appropriate committee, which shall notify the interested parties that they have three days within which to present their claims and defences, render their proofs and present such arguments as they see fit. At the end of this period the committee shall close the hearing, and within 24 hours following shall announce its decision by a majority of votes. No recourse lies against the decisions of the committees other than their responsibility. In conflicts relating to "shut-downs" (paros), in which conciliation is not effected, the committees shall always establish in their decisions whether or not the shut-down was lawful.

The President of the republic is authorized to take possession of and administer, on their account, industrial establishments which have temporarily or permanently shut down in cases not authorized by the Constitution, such authority to be exercised only so long as such establishments continue to refuse to renew their suspended operations. When the shut-down is lawful, the establishment shall not put it into effect until 10 days after the committee shall have handed down its decision, in the following cases: 1. When it will result in failure of supply of light, water or air, or suspend the operation of railroads or of urban street railways. 2. When it will deprive the sick or invalided (asilados) of a town of attention. 3. When in consequence thereof the inhabitants of a place (municipio) are deprived of any article of general and necessary consumption. In all such cases the President will at once take such steps within the scope of his powers in behalf of the public interests as he deems advisable to put an end to the causes of the trouble. In cases of lawful shut-downs which affect the public service, the President may take possession of the industrial establishment concerned for the purpose of averting the paralyzation of such public service. All persons who bring about shut-downs before the expiration of the 10-day period are subject to imprisonment.

"Moratorium" Legislation. Suspension of Payments.—In addition to her peculiar internal troubles due to the long period of revolution, Mexico was also acutely affected, as was all the

rest of the world, by the "World Conflagration" kindled by the "Beast of Berlin." Hence, not unnaturally, "specie payments" were suspended, and a series of executive decrees and laws was issued governing payments, or rather quite suspending payments and the enforcement of money obligations. As this legislation is to a large extent yet operative in Mexico, it may be of practical as well as academic interest to make a summary review of its principal features, going back to origins.

Law of September 15, 1916, applicable to all money obligations irrespective of the period of the obligation or of express stipulations in the contract in regard to the kind of money in which payment was to be made. The paper peso, "infalisficable" style, was declared to be of unlimited liquidating power, at par, and not only legal tender, but of "forcible" acceptance. All money obligations governed by Arts. 1453, 2690 and 2968 of the Federal Civil Code, and analogous provisions of the civil codes of the states, and of the Code of Commerce (federal), were suspended during the time the decree of July 21, 1915 (authorizing the issuance of said paper money) remains in force, and the present law takes their place. For the application of the law four periods of time are established: 1. Normal, or when there was no appreciable depreciation of the value of the fiduciary paper money, April 15, 1913, being fixed as the close of this period. 2. Between April 15, 1913, and September 10, 1914. 3. Between September 10, 1914, and April 30, 1916. 4. That beginning May 1, 1916, when the "infalsificable" was first put into circulation. The guaranteed value of the peso "infalsificable" was fixed in this law at "not less than" 20 cents national gold, or 10 cents United States gold. For money obligations contracted in these several periods, a "paper value" was established, of from 5 to 1 during the first to par during the third and fourth; all interest accrued prior to the law, and interest and other periodical payments due thereafter, were payable in paper at par. All debts, except certain classes specified, might be discharged by the debtor upon tendering to the creditor the amount in "infalsificables" established by the law according to the period when the debt was contracted, or by depositing the amount in court to the order of the creditor. Among the classes excepted from the obligation to receive payment in paper, were charitable institutions; muni-

cipalities, persons legally incapacitated, persons sick or unable to work, women and aged persons who have no one obliged to support them. Landlords could only enforce the payment of a specified portion of the rents due them in infalsificables.

A result of this decree, making obligatory the acceptance of this paper money, the tender of which cancelled the debt, was that debtors rushed to make judicial tenders and deposits of the paper, which had become perfectly valueless. The writer, being in Mexico in December, 1916, was tendered some $23,000 of a "real money" debt due a client, in a great bundle of "infalsificables" utterly worthless, but refused to accept the same and left it with the depositary; the debt has never been otherwise paid. So great was the clamor of protest against this decree, that it was replaced by another of December 14, 1916, which suspended the decree of September 15, 1916, "until upon the re-establishment of the constitutional régime in the country the lawfully constituted political powers shall issue laws or general dispositions applicable to the contracts, obligations and deliveries of money which were the subject-matter of said law." "During such suspension all creditors and debtors shall enjoy a general moratorium and shall not be obliged to make or receive payments of money against their will." But such payments and cancellation of obligations might be made by mutual agreement of the interested parties. Contracts of rental and lease were exempted from the moratorium to the extent that a part of the agreed rental, from 20 to 75 per cent according to the classification established in the law. Banks and insurance companies were subjected to a special decree, issued under date of December 15, 1916.

Taxes to be Paid in Coin (Decree of December 13, 1916).—By this decree it was provided that, from the first of January, 1917, all federal taxes (impuestos) and local state taxes should be paid in metallic money of national coinage, except that 20 per cent of the "additional federal tax" on all taxes paid to the states and municipalities (which was increased to 50 per cent of such local tax) might be paid in paper money of the latest issue.

Partial Raising of the Moratorium (Decree of April 13, 1918). In use of the extraordinary powers in matters of finance (hacienda) vested in the President by the decree of May 8, 1917, above cited, the moratorium was raised with respect to the pay-

ment of interest and of 25 per cent of the principal of certain obligations as expressed in the decree. It was declared that only those obligations were the object of the new decree and exclusively within its effects, which were enforceable according to the common laws and which had been contracted within the times as follows: 1. Prior to April 15, 1913, *i. e.*, during the time of metallic circulation. 2. Between that date and November 30, 1916, or during the régime of fiduciary circulation. 3. During the same period and which by express agreement were payable in a specified kind of money. 4. Between November 30 and December 14, 1916. Obligations renewed previous to April 15, 1913, were declared to be considered as made after that date and to be within the terms of the law. Obligations made or renewed during the régime of fiduciary paper money, containing agreement for payment in coin, but which were executed on skeleton or printed forms of document, were declared not obligatory as to such coin payments. Obligations contracted subsequent to December 14, 1916, not having been subject to the moratorium established by the law of that date, are not affected by the present law, but are governed by the ordinary civil laws. Contracts of lease continue subject to the law of December 24, 1917; and petroleum lease contracts continue to be governed by the law of April 9, 1918. The several classes of obligations indicated above according to the period when contracted, are declared payable as follows: Class 1, 25 per cent of the principal payable in gold, and the accrued interest payable in gold reduced to a paper basis according to a table of relative values, ranging from par in April, 1913, to 1½ cents per peso in November, 1916; Class 2 payable 25 per cent in gold reduced to paper equivalent, and all interest on the same basis of reduction, applying the sliding scale of values to each month's accrued interest; Class 3, 25 per cent of principal and all interest in gold at par without reduction; Class 4, payable in full, principal and interest, according to the terms of the contract. Special rules are established for the public offices and certain public or quasi-public establishments.

Exchange of P. O. Money Orders between Mexico and United States, under a convention between the post office departments of both governments, dated August 10, 1917, is promulgated by decree of April 17, 1918.

Federal Election Law (July 1, 1918).—Ordinary elections for the executive and legislative powers of the union will be held on the first Sunday in July of the years ending in a cipher and in an even digit. Extraordinary elections will be called by Congress or by the House concerned, whenever there is a vacancy to be filled or when for any reason the ordinary elections have not been duly held. Such extraordinary elections will be held so far as possible under the terms of this law; in particulars in which this is not practicable they will be governed by the provisions of the call, which will designate as the basis the last approved election lists. The country is divided into electoral districts, which will not be changed until a new census has been taken. For the formation and revision of permanent electoral lists (lists of voters) three boards (consejos) are created: Of electoral lists, of electoral and municipal districts. The personnel, selection and functions of these boards are prescribed at length. The electoral lists shall be permanent and subject to revision every two years preparatory to the ordinary elections, and shall contain the names of all qualified voters arranged in alphabetical order, with the statement of their civil status, business, age, whether they can read and write, and their house address. Every elector is obliged to give notice of any change of address, so that the lists may be corrected; if he moves to another municipality, he must advise the election boards of both. Provision is made for the verification of the lists, with notice to representatives of all political parties.

All male Mexicans, 18 years of age if married, and 21 years of age if unmarried, who are in the exercise of their political rights and are duly registered in the municipality where they reside, are qualified electors. The following are deprived of the right to vote and are therefore not electors: Tramps and habitual beggars; those who live on public or private charity; those subject to criminal process for a crime punishable by corporal penalty; those sentenced to corporal punishment, during the term of the sentence; those sentenced to suspension of the right to vote; fugitives from justice; those removed from guardianship for bad management of funds or unfaithfulness, and those deprived of the patria potestad; keepers of public or clandestine houses of prostitution; those supported by a public women; those who have been convicted of public and habitual drunkenness;

gamblers; all persons who have been convicted of crimes of electoral corruption, and subtraction or falsification of votes; in such cases the loss of the right to vote shall be for 10 years. Those subject to judicial interdiction and the inmates of insane asylums are incapable of exercising the right of voting. To be eligible for election as deputy in Congress one must be a qualified elector, a Mexican by birth, and of 25 years of age; he must be a native of the state or territory for which elected, or a resident (vecino) thereof for six months immediately preceding the election. The same qualifications are required to be a senator, except the age must be 35 years. No one can be senator or deputy, and his election is void, being in the active service of the federal army, or in command of the police, rural gendarmes, or other public force in the district of the election, unless he shall have retired from such service 90 days before the election; or Secretaries or Subsecretaries of State, Ministers of Supreme Court, Governors of states, their secretaries, and federal and state judges, unless retired 90 days previous to the election; ministers of any religious creed; the President of the republic during his term of office, and certain local officers. Besides the foregoing qualifications, to be President of the republic must be a Mexican by birth and the son of parents Mexican by birth, and have resided in the country during the entire year preceding the day of election. Those who become candidates for positions to which they are not eligible shall be punished as provided by this law.

Voting shall be strictly secret and by ballot furnished by the election officials, upon the presentation of the voter's certificate of registration and verifying his name on the electoral list. Provision is made for the use of automatic voting machines, provided that they meet the following conditions: That colored discs serving as party devices and the names of candidates can be visibly displayed; that the total number of votes and the number which each candidate receives can be automatically indicated; that blank spaces are provided in which the names of unlisted candidates may be written; that the secrecy of the ballot can be preserved; that the voters of the precinct know how it is operated. No person carrying arms can be allowed to vote; military men, otherwise properly qualified, may vote if they come to the polls unarmed. All persons are required to vote in the precinct of their

residence, except military men in campaign, who may vote in the nearest precinct. Every one who votes in the name of another, or more than once, whether in the same or different precincts is subject to a fine from 50 to 500 pesos and to imprisonment from 16 to 90 days, and shall lose the exercise of his political rights for three years.

Elections for President are held on the same day and with the same electoral lists as the above, but separate ballots and a separate ballot box are provided for voting for President, in addition to the separate ballots and ballot boxes used in voting for senators and deputies.

Every Mexican citizen, resident of an electoral district, has the right to challenge before the Chamber of Deputies, the validity of the election of the deputy from his district or of votes cast for him in said district; likewise before the Senate the election of senators of his state, and before the Chamber the election of President of the republic, or of votes cast for him in the state where the elector is registered. Such reclamations are not subject to any formality; but whoever exercises the action of nullity recklessly or with bad faith is subject to fine and imprisonment.

Grounds for the nullity of an election are: Want of eligibility or legal qualifications of the person elected; coercion, subornation, or any kind of pressure by any authority to obtain votes in favor of a particular candidate; violence at any polling place by persons in authority or private persons for the purpose expressed above; error in regard to the person elected; error or fraud in the computation of votes; the establishment of the polling place in a different place or under different conditions than as provided by law; violation in any way of the secrecy of the ballot; prevention of the representatives of political parties or of candidates from exercising their rights of vigilance.

Electors who without good cause (causa justificada) fail to vote shall be punished by the suspension of their political rights for one year. In case of a second failure (reincidencia) within five years, in addition to suspension, a fine from 5 to 50 pesos will be imposed; if such failure to vote is again repeated within 10 years, a fine from 25 to 500 pesos will be imposed, and the suspension of political rights for the term of five years. Under like circumstances, the same penalties will be imposed upon those who

fail to register themselves in the electoral lists in the manner prescribed in this law.

Reformation of Monetary System.—Two presidential decrees, one of October 31, 1918, the other of November 13, 1918, make changes in the monetary system of the country. The first, relating to gold coinage, recites that in view of the necessity to counteract the scarcity of silver fractional coinage, which it is impractical to create on account of the high price of silver, two new gold coins are created of the value of $2.50 and $2 (pesos) respectively. The $2.50 coin is to contain 2.083⅓ grams of gold in weight, 900/1000ths fine; the $2 coin to contain 1.666⅔ grams of the same fineness. The second decree recites that on account of the high price of silver in the markets of the world, the old silver peso ($1) has long since disappeared from circulation, and the fractional silver coinage tends also to disappear for the same reason, all efforts on the part of the government to prevent it being defeated by all kinds of devices due to the fact that the mercantile value of the silver in the coins is greater than their nominal value; the remedy therefore lies in reducing the amount and value of silver in such coins, so as to remove the incentive for exporting, melting or hiding the same; that this remedy is all the more acceptable inasmuch as such fractional coinage has only a representative value without other function than as auxiliary to the gold coinage, which is the basis of the Mexican monetary system. That as the old silver peso ($1) has entirely disappeared, it should not be considered as part of the monetary system; but as it is convenient that there should be fractional silver coins of the value of one peso ($1), the old silver pesos are demonetized, thus completing and consolidating the monetary system established by the law of March 25, 1905, pending the entry of the country definitely upon the system of gold monometalism. The theoretical unit of the Mexican monetary system shall continue to be, exclusively, the gold peso ($1) of 75 centigrams of pure gold, as established by the law of March 25, 1905. The old silver peso established by that law, shall cease to be coined and shall no longer be considered as a lawful money. The silver coinage shall continue to be coins of one peso, and of 50, 20 and 10 cents; all of which coins shall have a "law" or composition of 800/1000ths of silver and 200/1000ths of copper,

and shall be considered as fractional coinage of the gold coinage created by the law above cited and its amendments. The peso shall have a diameter of 34 millimeters, and a weight of 12.125 grams, of which 14.5 grams shall be pure silver, the minor coins in proportion. The exportation and melting down of the old fractional coinage is absolutely prohibited, under penalty of the confiscation of all money fraudulently sought to be exported or recast; if the act of exportation is consummated, it will be considered and punished as the crime of contraband. Delators of these offences shall receive a renumeration equal to one-half of the money confiscated or of the amount of the fines imposed.

J. W.

NICARAGUA.

Postal Tariff.

1. A new postal tariff went into effect on January 15.

Nicaraguan Society of Lawyers Organized.

2. Preliminary steps have been taken for organization in Managua of a society of lawyers to act in co-operation with the Royal Society of Law and Jurisprudence of Madrid.

Review of Finances of Nicaragua by the President in His Message to Congress.

3. The President stated that claims have been submitted to the commission of public credit aggregating a total of $12,500,000, but that these have been settled by the payment of $1,500,000 in cash, the remainder of the money obtained in accordance with the Chamorro-Bryan convention, and $4,000,000 in 5 per cent customs bonds authorized by Congress; that the national revenues produced in 1917 a total of $1,049,414 and that Nicaragua citizens pay $3.03 per capita. The message states that Congress recently enacted a law prescribing that the fiscal year shall be from January 1 to December 31, and fixing the general expense budget for 1918 at $1,140,000, of which $960,000 are for general expenses specifically mentioned and $180,000 for emergency or unforeseen expenditures.

CONSOLIDATION AND PAYMENT OF THE PUBLIC DEBT.

4. A law passed by the National Congress authorizes the executive power to effect the consolidation and payment of the public debt of the nation on certain bases prescribed in same. One part of the debt is to be paid in cash and another by the issue of 4,000,000 cordobas (cordoba equals $1) in guaranteed custom-house bonds bearing 5 per cent interest annually, which are not to be used for any other purpose than the liquidation of obligations acknowledged by the Commission of Public Credit. For the payment of these bonds 12½ per cent of the surcharge on import duties and 50 per cent of the direct tax on capital shall be applied. When the obligations provided for in the financial plan have been liquidated so that the government can freely dispose of the entire amount of the tax, all of same shall be applied exclusively to the payment of these bonds. Said custom-house guaranteed bonds shall be of the form and denominations prescribed by the aforesaid law and are redeemable at the National Bank of Nicaragua (Inc.) when approved by the International High Commission acting as fiscal agent of the republic, and after due registration and authentication without which requisites no bond shall be valid. The interest on the bonds shall be paid semi-annually on the first days of March and September of each year. The law referred to also prescribes the rights, powers and duties of the fiscal agent of the republic.

PENAL RULES AND REGULATIONS.

5. A new law amends Arts. 18 to 23, inclusive, of the Penal Rules and Regulations.

STANDARD TIME ADOPTED.

6. The collector-general of customs was instrumental in having a standard time adopted for the republic. Previous to 1917 there were three kinds of time governing separate portions of the community, namely, the time indicated by the cathedral clock in Managua, railroad time, and ship's time obtained from vessels at Corinto. These times frequently varied from each other from 15 to 30 minutes. The government adopted the hour of the 85th western meridian as the standard. The exact time is now

obtained daily through the wireless station of the American Legation Guard of U. S. Marines at Managua, from the wireless stations at Darien, Canal Zone, Key West, Fla., and Arlington, Va., near Washington, D. C. Thus time is telegraphed throughout the republic.

New Tariff Law.

7. The new tariff law, which went into effect March 1, 1918, gives the republic a well classified up-to-date tariff and does away with the anomaly of having two different tariffs, one for the Pacific and another for the Atlantic coast.

Venezuela to Send Free Postal and Telegraphic Matter of Nicaragua's Consuls and Ministers There Resident.

8. The Minister of Foreign Relations has received a communication from the foreign department of the government of Venezuela conveying the information that in order to facilitate American intercourse the latter country will transmit free of charge official postal and telegraphic matter from consuls and ministers accredited to Venezuela. Postal rates and telegraphic tariffs will also be reduced 50 per cent for the purpose of furthering the cause of international news. W. S. P.

Legislation.

"La Gaceta," April 3, 1918. Decree No. 7. Governing registration of drug stores.

"La Gaceta," April 20, 1918. Decree of April 12, 1918, making study of English obligatory in public schools.

"La Gaceta," April 30, 1918. Decree of April 26, 1918, governing export of manufactured articles where raw materials have been imported and duty paid on same.

"La Gaceta," May 1, 1918. Decree for the protection and honor of the home and family and punishment of crimes in violation thereof.

"La Gaceta," May 8, 1918. Decree No. 6. Art. 1. From the publication of the present law, the entrance and admission into Nicaraguan territory of the following classes of foreigners is prohibited:

Persons affected with tuberculosis or any contagious, dangerous or repugnant diseases.

Beggars and persons who by their physical or moral condition represent a useless or dangerous charge which is grave for society.

Those having been condemned in other countries for assassination, homicide, fire, robbery, theft, rape or violation, etc.

"La Gaceta," May 10, 1918. Decree declaring that from this date a state of war exists between Nicaragua and the Imperial Governments of Germany and Austria-Hungary, etc.

"La Gaceta," June 7, 1918. Decree No. 8. Governing the obligations, manner of living, health, etc., of prostitutes.

"La Gaceta," June 17, 1918. Decree No. 13. Art. 1. Parents, guardians or those in charge of children, if these are between the ages of 6 and 13 completed years for boys and between 6 and 12 for girls, are obligated to send them every school day, either to official, private or municipal authorized schools, if it cannot be proven that they are receiving adequate education and competent instructions at home, etc.

"La Gaceta," July 1, 1918. Decree No. 110. Making July 4 a national holiday.

"La Gaceta," July 26, 1918. Decree No. 14. Providing for the punishment for desertion by the husband.

"La Gaceta," July 26, 1918. Decree No. 15. Modifying Art. 1 of the law of July 29 governing the slaughter of cattle.

"La Gaceta," August 3, 1918. Decree No. 12. Decree of July 12 regulating the sale and use of firearms.

"La Gaceta," August 13, 1918. Decree No. 16. Law governing the use of automobiles and other vehicles—traffic regulations regarding same.

"La Gaceta," August 14, 1918. Decree No. 120. Governing indigenous communities and their laws.

"La Gaceta," September 10, 1918. Decree No. 18. Governing the sale of sugar in the republic.

"La Gaceta," September 26, 1918. Decree of President governing direct tax on property.

E. B. N.

PANAMA.

Stamp Tax on Naturalization and Passport Papers.

1. Executive decrees, effective January 1, require that naturalization and passport papers, issued by the authorities, shall have attached, in the case of naturalization papers, a $10 stamp. Passports to Chinese, Syrians, Turks and North African Turks must be issued on stamped paper, with a $10 stamp affixed.

Organization of Law School.

2. Steps have been taken for the organization of a law school under the National Institute. It is proposed to employ as teachers the best legal talent obtainable in the republic, and to give students a thorough practical and theoretical training.

Law on Nationalization of Vessels.

3. There has been passed an amended law concerning the nationalization of vessels, which consists of 20 chapters and 103 articles.

New United States District Judge for the Canal Zone.

4. John W. Hanan, of Indiana, has been appointed and is now sitting district judge for the Canal Zone.

Decree Forbidding Exportation of Silver Coins.

5. A decree forbidding the exportation of Panamanian silver coins from the republic of Panama, or of bar silver made therefrom, except with the permission of the Secretary of the Treasury, has been made effective in the Canal Zone.

W. S. P.

PERU.

Law No. 2727. March 20, 1918. Amends laws Nos. 2143, 2187 and 2230 as to export duties.

Export duties are levied on sugar, cotton, wool, cocoa, cocoaina, metals and minerals and sundry other articles, the rate varying according to the market price, the general principle being to impose a tax of 10 per cent on profits. The laws and decrees limiting exports of food products are kept in force (Art. 15). Exporters who fail to comply with the requirements of the Commercial Code as to keeping books are debarred from contesting the assessments of profits made by the tax officials (Art. 16). The law is intended to be a temporary measure, pending passage of a definite Profit Tax Law (Art. 17). As to agricultural products it will expire six months after the end of the European war (*id.*).

WAREHOUSE LAW.

Article 1. The executive power may authorize anonymous societies to establish general stores for the purpose of depositing and preserving merchandise—domestic and imported products.

In each case the government will fix the necessary guarantees to insure the fulfillment of obligations of the companies with the public and will approve the maximum tariffs that they may charge for deposit and operations in connection with same.

For the present said companies only enter into operations in offices belonging to the treasury.

The government may subscribe up to a quarter of the capital of the said companies.

These store-rooms will be under the supervision of the custom-house officials.

Art. 2. Upon delivery of goods, the administration will issue to the order of the depositor a "certificate of deposit" which will carry annexed a "warrant" if the interested party so desires, expressing on either document:

1. The name and residence of the depositor.
2. Date of issuance.
3. Number of the order of the certificate.

4. Designation of the store-room and the signature and seal of the administrator.

5. The species of merchandise of products—quantity, weight, quality and condition, kind and mark of the parcels and any other indication that may serve to identify the articles and to know their value.

6. The amount of insurance and name and residence of the insurer.

7. Length of time for which the deposit is made, and which must not exceed one year.

8. Amount that must be paid for storage, conservation and operations connected therewith.

9. Declaration as to whether the articles are subject to duty at the custom-house or other taxation and stating what is owing on them for other reasons.

Art. 3. Receipts and warrants will be of uniform style according to the model given by the executive power; it will be numbered and be torn out leaving a corresponding stub which will be kept in the store or warehouse, and upon the stub will appear all the above-mentioned circumstances, detailed in the previous article.

Art. 4. Before issuing a deposit certificate for merchandise that is subject for duty, the respective custom-house will examine and fix the amount of duty required and also whatever other payments may be required.

Art. 5. Deposit certificates will only be issued for merchandise whose approximate value may not be less than 100 pounds Peruvian money.

Art. 6. No deposit certificate will be issued for articles subject to mortgage or judicial embargo notified to the administration of the warehouse.

Art. 7. It is forbidden to the companies or general warehouses to effect any purchase or sales of merchandise or products of the same nature as those received in deposit or to make loans upon the articles deposited.

Art. 8. The holders of deposit certificates or warrants will be entitled to examine the goods deposited and detailed therein, and will be allowed to take samples from them if they are of a nature to permit of it, in such proportion and form as provided for by the decree of the by-laws.

Art. 9. The management is responsible for damage from the time that the merchandise is received until it is delivered, in case of loss, injury or if due to delay in its return, unless it can be proved that the damage was caused by major force, or owing to the nature of the merchandise or bad packing not noticeable outwardly, or through the fault of the depositor or his employees.

Art. 10. All deposited merchandise will be insured against fire, and if this is not done by the interested parties the administration will do so at their expense.

Art. 11. The holder of a deposit certificate and warrant attached thereto, has the right to ask that the deposit be divided in lots and that a new certificate is given him for each lot, with its corresponding warrant, in place of the previous ones which will in such cases be cancelled.

Art. 12. Deposit certificates and warrants are transferable by endorsement.

The endorsement produces the following results:

A. Being of the certificate and the warrant transfers the free disposition of the articles deposited.

B. Being of the warrant gives right of security or pawn upon the same articles, with the charges of same in favor of the holder of the warrant.

Art. 13. The endorsement of the deposit certificate separate from the warrant may be made in blank, with only the date and signature of the endorser.

It is optional to register these endorsements or not in the book for that purpose in the warehouse.

Art. 14. The first endorsement of the warrant apart from the certificate will contain the date, signature of the endorser, name, residence and signature of the endorsee, amount loaned, date of expiration of the debt, interest agreed upon, place of payment and declaration that the warrant is transferred in guarantee of the obligation. On the certificate of the corresponding deposit will be placed an exact copy of the first endorsement of the warrant, signed by the endorser and the endorsee. Said endorsement will be immediately transcribed to the book of endorses carried by the warehouse; and the administrator of same will testify at the foot of the

endorsement that the transcription has been accomplished. Whilst the first endorsement of the warrant has not been registered the full requirement has not been completed regarding the articles deposited.

The following endorsements whose registration is not obligatory, may be made in blank.

Art. 15. Effects deposited will be returned to the holder of the deposit certificate who may resent said certificate and the warrant corresponding thereto, if it has been negotiated or if it be endorsed in his favor or in blank.

Art. 16. In case the warrant is not paid when it falls due, the holder will have it protested against the first endorser, within eight days, with the formalities usual in protesting notes of exchange.

The administrator of the warehouse upon petition of the creditor presenting the warrant and testimony of protest, will order, without necessity of judicial decree, after two days have passed from the date of protest, the sale of the protested merchandise.

This order will be communicated by registered letter to the last endorsee of the deposit certificate whose name and residence may have been registered, or to the depositor if there is no registered endorsement.

Art. 17. The sale of the articles effected by the payment of the warrant shall not be suspended on account of bankruptcy, inability or death of the debtor, nor for any other cause that may not be a judicial order, for the payment of the value of the debt, interest thereupon, and expenses.

Art. 18. The sale will take place in the warehouse, after being duly advertised for six days, by an auctioneer appointed by the administrator, according to rules governing auction sales in Art. 705 of the Civil Code. The value of the merchandise thus sold will not have to be calculated, and the goods will be sold to the highest bidder, whatever the price may be.

Art. 19. In the first place, payment will be made for the expenses of deposit, expenses for conservation and insurance owing to the warehouse; secondly, the expense of the auctioneer and other expenses in connection with the sale; thirdly, custom-house expenses and other impost duties to which the

merchandise may be liable and lastly to cover the capital and interest due the holder of the warrant, with the privilege of preference over any other creditors.

The highest bidder will remain at the disposal of the holder of the deposit certificate, and if he should be unknown it will be left to the decision of the judge.

Art. 20. The distribution of the value of the sale will be made by the administrator of the warehouse, according to the order laid down in the previous article.

Art. 21. If the sale is suspended according to provision made in Art. 17, the judge upon petition made by the holder of the warrant will order that he receive the sum entrusted, giving a satisfactory guaranty, in case he should have to return its value, said guaranty being considered cancelled in case there is no call for it within 30 days after it is delivered.

Art. 22. The distribution of the value of the insurance of the merchandise, in case of loss of same, will be made in the same form and covering the same order of preference as upon sale of the goods.

Art. 23. If the price obtained by sale of the goods, or if the insurance obtained therefrom in case of fire, etc., should be insufficient to cover the debt guaranteed by the warrant, the administrator of the warehouse will return the warrant with a notation, signed by him, stating the amount that has been paid on account.

For the balance that might remain, the holder of the warrant will have executive power upon the first endorser provided the sale of the merchandise takes place within 30 days from the date of protest, and that he presents his claim against the endorser within 15 days after the sale of the goods.

Be it that the auction sale of the goods paid the value of the warrant, or that its cancellation should have caused execution as mentioned in the previous paragraph, the first endorser will have the right to take ordinary action to which Art. 1084 of the Civil Code refers, if he considers he has been made the victim of a trick or unjust proceeding.

Art. 24. If the endorsement of the warrant was made with the clause "without guaranty," the holder of the warrant can take no action against the endorser for the balance due him which is not covered by the value of the merchandise.

Art. 25. The holder of the deposit certificate may pay the value of the warrant before the date agreed upon; if the holder of the warrant be unknown, or in case that he should disagree with the debtor with reference to the conditions observed in making the anticipated payment, the holder of the certificate will deposit the required sum, including interest up to the date that the deposit falls due, in the hands of the general administration, which becomes responsible for the sum received. This sets the merchandise free and it may be delivered to the holder of the deposit certificate. The delivery will be communicated to the holder of the warrant if he be known, by the administration.

Art. 26. The holder of a deposit certificate may obtain delivery of goods in the same form as established in the foregoing article after the date of the warrant falls due, and eight days after, if the holder of the warrant should be unknown, or should refuse to receive payment, or to return him the cancelled warrant.

Art. 27. The depositor who may have separately endorsed the warrant and the certificate of deposit, and who should pay the warrant upon its falling due, can present it to the administrator of the warehouse and present his petition for the sale of the merchandise eight days after date of falling due, to reimburse himself from the proceeds of said sale, for the sum paid, the balance remaining at the disposal of the endorsee of the deposit certificate. The order of sale will be communicated to him in case his name and residence be known.

Art. 28. The terms for the loans upon warrant will not exceed the time agreed upon for the deposit of the goods.

Art. 29. If the merchandise is not removed at the time of expiration date of the term of deposit, or if they be exposed to damage, the warehouse has the right after giving notice to the depositor, to have them sold at auction according to

Art. 18 and to reimburse itself for all expenses incurred by same.

If there be a surplus after all payments are made, it will be turned over to the holder of the warrant; and if there is still a surplus it will be handed to the holder of the deposit certificate.

Art. 30. In case of loss or destruction of a deposit certificate or of a warrant, the holder will immediately advise the administration or may, through an order from the judge, by duly proving the property is his and giving a guarantee, obtain a duplicate of the document after advertising same in the newspaper for 15 days.

The guaranty will be cancelled if within six months of issuing the duplicate no claim has been presented for the original warrant or deposit certificate.

E. B. N.

SALVADOR.

Salvadorean Agricultural Credits.

1. The executive power has approved the by-laws of a co-operative society entitled Salvadorean Agricultural Credits, recently organized in the capital of the republic to aid in the development of agriculture and allied industries by encouraging the agricultural activities of its members, strengthening the bonds of friendship existing between agriculturists and their business associates, and by aiding them in borrowing money at a reasonable rate of interest for investment in legitimate agricultural enterprises.

Parcel Post Convention Between Salvador and Spain.

2. The executive power promulgated a convention for the direct exchange of parcel post packages between Salvador and Spain, including the Balearic and Canary Islands and the Spanish possessions in Northern Africa, concluded by the parcel post authorities of the two countries, the contract being based upon the provisions of the parcel post convention of Rome of May 26, 1906.

PARCEL POST CONVENTIONS WITH UNITED STATES, GREAT BRITAIN AND SPAIN CONCLUDED.

3. In his message to the Congress on February 28, 1918, President Carlos Melendez called attention to the fact that parcel post conventions were concluded with the United States, Great Britain and Spain, and with the latter country a money-order convention in 1917.

TREATY WITH UNITED STATES IN REGARD TO TRAVELING SALESMEN.

4. With the desire of strengthening the bonds of sympathy now existing between the government of Salvador and that of the United States, and of securing in an effective manner the development of mutual mercantile relations between the two countries, the government of Salvador has resolved to conclude with the government of the United States a treaty concerning the rights and privileges of traveling salesmen, and has authorized Dr. Rafael Zaldivar, envoy extraordinary and minister plenipotentiary of the government of Salvador in Washington, to formulate such a treaty in conjunction with a duly appointed representative of the United States, and to sign same for and in the name of the government of Salvador.

BOUNDARY TREATY SIGNED WITH HONDURAS.

5. On April 5, 1918, a boundary treaty between the governments of Salvador and Honduras was signed in Tegucigalpa for the settlement in an amicable manner of the differences existing between the two countries concerning their boundaries. In accordance with the terms of this treaty both governments are to appoint commissioners and organize a mixed boundary commission to solve the doubts and differences relating to the land frontier and fix the boundary line between the two countries.

NEW MILITARY CODE PROVIDES FOR CONDITIONAL PUNISHMENT AND THE CREATION OF A MILITARY LAW DEPARTMENT.

6. The Supreme Court has rendered a favorable decision on the Military Code which the Department of War submitted to the

National Assembly to take the place of the former code. The code contains two features which the court believes should be adopted by the civil courts of the republic, inasmuch as they constitute an important sociological advance in penal law, that is to say, conditional punishment which has been in successful operation in France for a number of years, and the establishment of a military law department.

LAW AFFECTING SALVADOREAN BANK FUNDS.

7. Congress has enacted a law requiring the Salvadorean bank to maintain on hand a guarantee fund in coin amounting to 40 per cent of its bank bills in circulation.

LAW AFFECTING THE RIGHT OF PROPERTY IN MINERALS.

8. Acting upon the suggestion of the President, Congress has enacted a law repealing the legislative decree of April 19, 1899, concerning minerals in veins, and declaring as the property of the state all mineral veins, deposits and outcroppings, as well as petroleum and coal. Earthy mineral substances, silica and construction rocks, sands, glass, manganese, limestone, salt, etc., belonging to the owner of the land on which they are found. The law referred to does not impair the rights of property owners who may have previously discovered and worked mineral veins within their respective zones, nor the legally acquired rights of third parties.

POSTAL MONEY-ORDER CONVENTION CONCLUDED WITH HONDURAS.

9. On May 31 a Postal Money-Order Convention was concluded between the governments of Salvador and Honduras. It is believed that this convention will greatly facilitate and encourage commercial transactions between the two countries.

W. S. P.

VENEZUELA.

LEGISLATION.

Decree of June 4, 1918, in "Gaceta Oficial," of June 7.

Article 1. Societies (companies and partnerships) formed in foreign countries, having as their principal object commerce or industry in Venezuela, will be considered wholly as national societies, and will comply with formalities established in Arts. 294, 295 and 296 of Code of Commerce.

Art. 2. Societies actually in existence which may be in the case foreseen in previous article, and which may not have filled the legal requisites there established, will proceed to comply with them within six months after the publication of this law.

Art. 3. Failure to comply with the formalities which Art. 1 refers to, as regards the societies there indicated, will produce the same legal consequences as if treating of societies organized in Venezuela, and in every case its managers will be responsible personally and entirely for all obligations contracted in the exercise of his functions.

Art. 4. Societies formed outside of the republic and doing business only in the country, and those who wish to establish here agencies, branches or enterprises which is not their principal object, and insurance companies, to all of which Section IX, Title 11, Book 1 of the Code of Commerce applies, will continue to be governed by the corresponding dispositions of said section.

Art. 5. The national government will not contract any service nor improvements in the republic with foreign societies not having previously complied with the formalities required by the Venezuela law, which according to the case may correspond to them to fill, for their due performance in Venezuela, nor will it authorize the transfer of any contract to them.

National Treasury Law (May 28, 1918) in Gaceta Oficial, June 15, 1918.

Art. 4. Credits in favor of the government not paid upon demand may be sued for by the special process established in the Code of Civil Procedure.

Art. 5. In no case is set-off against the government admissible, irrespective of origin or character of the credits which claim set-off.

Art. 7. No agreement may be reached or compromise carried out, nor discontinuance of any government action made without authorization from the federal executive in writing through the procurator general of the nation.

Art. 10. In no case shall judgment be rendered with costs against the nation, whether the appeal is confirmed, denied, set aside or discontinued.

Art. 15. The revenues of the nation are not subject to embargoes, sequestration or mortgage.

Art. 16. All titles and shares in favor or in charge of the national government are subject to the regulations of the Civil Code.

Art. 21. Realty belonging to the nation cannot be alienated without the express approval of the national congress.

Art. 22. The federal executive may transfer the personality of the nation which may not, in his judgment, be necessary for the public service.

Art. 24. The property of the nation is exempt from taxation by the states.

Art. 157. The national budget of each fiscal year shall contain the expenses authorized by Congress. The fiscal year shall begin July 1 of each year and end June 30 of the following year.

Art. 158. The federal executive shall formulate the budget which shall be presented to Congress by the Minister of Hacienda. If by July 1 the budget shall not be approved for the fiscal year beginning on that date, the budget for the previous year shall continue in force until it has been annulled.

Law of Revenue from Salt Deposits (May 24, 1918).

This revenue is derived from the following sources:

1. A tax of 25 "centimos de Bolivar," payable per kilogram of salt.

2. The proceeds of the remuneration received by the treasury for the industrial operations and services of the

national government, in the direct development of the salt mines, which will be charged all purchasers for salt delivered alongside steamer, in conformity with the tariffs fixed by the federal executive.

3. The proceeds of the remuneration received by the treasury in repayment of expenses occasioned by the service of the salt deposits, and which will be charged purchasers in accordance with the tariff fixed for each deposit.

4. The proceeds from the sales of salt for exportation.

5. Proceeds of fines for violation of this law.

Authority is granted for the federal executive to reduce the impost of 25 centimos per kilogram, to 10 centimos, when salt is destined for curing of fish or meats for export.

The salt revenue division will keep account strictly of the following divisions: (A) Imports of salt; (B) sale of salt; (C) exportation of salt; (D) fines for violation of law; (E) Miscellaneous receipts; (F) reimbursement.

The production of salt will be made directly by the national administration or individuals authorized by it.

Neither states nor muncipalities may tax the salt.

Especial permission necessary by Minister of Hacienda for developing salt mines, which permission may be suspended when in the opinion of the minister fraudulent procedure is suspected. Permission will be denied to persons who have been found guilty of defrauding the national treasury.

Each salt works shall have a manager, a superintendent, a bookkeeper, and any other necessary clerical force, and where possible one service of administration and accounting shall serve for more than one salt works.

The duties of the manager shall be to organize and inspect the work of the extraction of salt, the weighing and packing of the same, etc., and to formulate the regulations for the various salt works, which he will submit for the approval of the Minister of Hacienda. He will also submit to the same officer tariffs for payment of salaries, etc. He will oversee the delivery and despatch of salt destined for the government salt deposits. He will also have charge of the delivery of

salt to individual purchasers. The law cites other duties of the manager.

Deposits of salt to be established by the federal government at the various ports for general consumption; and for this purpose there must exist in each port an office of the hacienda, with account books, etc., for the operation of the business, and each such deposit shall be in charge of an employee to be styled the "Chief of Salt Deposit." The law cites the duties of such employee.

The revenues from the salt works shall be made direct to the national treasury and other officers authorized to receive government revenues. The payment of fines shall be made to the office or officer who has the legal authority to impose them.

All parties interested in purchase of salt from the national depositaries must petition the corresponding office in due legal form, and the petition, after due process, will be granted.

Regarding the exportation of salt, the interested parties shall address themselves to the Minister of Hacienda, stating the amount in net kilograms, the salt works or warehouse from which the salt is to be delivered, price offered per kilogram, style of packing for transportation, class and nationality of the steamer upon which it is to be loaded, foreign custom-house to which destined, indication of the port from which the steamer will be despatched.

After the proposition has been accepted the interested party must furnish a bond, referred to in Art. 41, upon which the corresponding salt certificate, for delivery of the salt, will be granted.

The salt exported over the frontiers of the republic must pass through the custom-house of Cuidad Bolivar or Maracaibo.

Interested parties desiring to so export salt must address the Minister of Hacienda.

If the proposition has been accepted, the Minister of Hacienda will authorize the corresponding custom-house to receive the petition of the interested party, and the corresponding bond. The law provides for the procedure by the customs authority.

Law of Railway Concessions (June 4, 1918), Gaceta, June 11, 1918.

All concessions to be made by contract with the federal executive, to national or foreign companies legally constituted, or to individuals. No interest will be guaranteed by the government on the capital invested in construction of railroads. All national or foreign corporations constructing or developing railroads are subject to the provisions of the Commerce Code. No concession can be transferred, either totally or partially, to a foreign government, and for valid transfer the consent of the federal executive is necessary. At least one-half of the laborers employed in the construction and development of the railroad must be of Venezuelan nationality.

All concessions must contain the clause "All controversies and disputes of any nature, arising from the contract, which cannot be amicably settled by the contracting parties, shall be decided by the proper Venezuelan court, in conformity with the laws, and shall not under any condition be made the basis for foreign claims."

No contracts can be carried out without having been first approved by the national congress, and all contracts shall stipulate the date upon which the construction of the railroad shall be begun, which shall not exceed two years dating from the approval of the contract by the Congress; also the time needed for the termination and opening of the line to the public. If the contractor does not commence the construction of the railroad within the time stipulated, the deposit prescribed by Art. 11 shall become the property of the government.

The petitioner for a railway concession shall deliver to the national treasury an amount equivalent to 20 bolivares per kilometer of the projected line, to be made in current money or its equivalent. The contractor shall also pay an amount in cash proportionate to the length of the projected line, on the following bases: Line of 0,61 meters, B 600 per kilometer; 0,915 meters B 900 per kilometer; 1,07 meters B 1000 per kilometer; 1,435 meters B 1400 per kilometer.

The federal executive may reduce this deposit, up to 15 per cent, and the deposit shall be made in current coin or its equivalent in bonds of the public debt of Venezuela, at the rate quoted on the day of deposit, either in a bank or a commercial house, to the satisfaction of the federal executive. The deposit has for its purpose the guaranteeing of the fulfillment of the contract on the part of the contractor. In case the deposit is made in bonds of the public debt of Venezuela, the coupons maturing in favor of the depositor will run for his account. The deposit will be returned to the contractor by the national government on the completion of the railroad. The contractor shall submit to the Minister of Public Works the general plan of the lines, etc.

Law of Telephones and Telegraphs in Gaceta Oficial, June 27, 1918.

1. All telephones and telegraph lines are under the direction of the Ministry of Fomento.

2. The government defrays all expenses of federal telephones and telegraphs.

3. The national government alone may construct telegraph lines and determine their use. Exception: Railways, upon obtaining permission from the government, may construct telegraph lines for their own use.

4. The government alone may construct telephone lines, but in special cases may give permission to companies or individuals for this purpose.

6 and 7. States and municipalities may build lines for use within their own limits, providing they do not interfere with the federal lines.

8. All citizens have the right to use the telegraph and telephone lines, but the government may censor the messages and may forbid their delivery if necessary.

9. The federal government shall make arrangements for international communications.

Arts. 10 to 16 have to do with the organization of the postal offices, their personnel, and individual responsibilities.

Arts. 17 to 28 have to do with the construction of lines.

Art. 29. The federal government shall determine the tariff to be charged for the use of its lines.

Arts. 30 to 35. The following messages shall be exempt from tariff: Messages sent by government or state officials which are in the interest of the public; answers to such messages; messages of public interest sent by institutions, corporations and companies to whom the executive grants certain preferences. This exemption may be absolute or limited.

Arts. 36 to 39 provide for a bookkeeping department.

Arts. 41 to 44 give the qualifications necessary for a telegrapher of first, second and third class.

Arts. 45 to 54 give the offences for which an employee may be punished.

E. B. N.

2. EUROPE.

GERMANY.

LEGISLATION, 1918.

CONSTITUTION.

Law amending the Constitution (No. 144).

ELECTIONS AND THE REICHSTAG.

Law concerning the formation of the Reichstag and the holding of elections in the large Reichstag election districts (No. 115); Imperial election law of November 30, 1918 (No. 167, amended by Nos. 173, 187 and 196); amendment to the law granting compensation to members of the Reichstag (No. 82); law extending the legislative period of the Reichstag (No. 91).

TAXES.

Laws imposing taxes on sales of commodities and luxuries (No. 95), wine, champagne, mineral waters, drinks, coffee and tea (No. 97), beer (No. 98); amendments to the coal tax law (No. 3), the war tax law of July 21, 1916 (No. 93), the stamp tax laws (No. 96), and the law concerning postal and telegraph charges (No. 102); law concerning the war payments of the Imperial bank (No. 39); law against tax evasion (No. 100).

MONOPOLIES.

Law creating a government monopoly of spirits (No. 99), and amendment to the potash law (No. 92).

EXCHEQUER OFFICE.

Law establishing an exchequer office and the imperial supervision of customs duties and taxes (No. 101).

CODE AMENDMENTS.

Amendments to the Industrial Code (No. 72), the postal code and the postal check law (No. 43), and the prize code (No. 57).

MILITARY AFFAIRS.

Law for utilizing those unfit for military service (No. 111); supplement to law concerning settlement of claims, and a law concerning settlement of claims of officers (No. 106); modification of the military criminal code (No. 94); law concerning the formation of a voluntary national defence (No. 180).

SPECIAL EMERGENCY MEASURES.

Decree against profiteering (No. 66); amendment to law concerning Imperial bonds for the promotion of the building of small dwellings for Imperial and military officers (No. 118); law concerning war bonus to fees of solicitors and sheriffs (No. 48); ordinance concerning the opium trade (December 15, 1918).

Aside from the laws noted above there were various budget laws and laws of minor importance and many regulations concerning trade, prices, food supply, crops, commodities, daylight-saving, etc.

The following treaties were published in the Reichsgesetzblatt of 1918:

Consular treaty between Germany and Turkey (No. 55).

Treaty of peace between Germany, Austria, Bulgaria and Turkey with Russia (No. 77); supplement to same (No. 130).

Treaty of peace between Germany and Finland (No. 85).
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Paul Laband, who together with F. Stoerk founded the "Archiv des öffentlichen Rechts" in 1885 and who is a well-known authority on public law, died on March 23, 1918. A memorial number of the "Archiv" (1918, Heft 1) is dedicated to his memory.

R. L. N.

GREAT BRITAIN.

LEGISLATION.

Legislation in the last session of the British Imperial Parliament shows a surprising interest in questions other than war questions. The review printed in the last bulletin of the bureau shows a very complete absorption in war problems. Apparently the last year of the war found Parliament faced with the necessity of devoting itself almost as much to internal problems as to legislating for the prosecution of the war.

Among war statutes the most noteworthy are the Military Service (No. 2) Act, 1918, 8 Geo. V, c. 5, April 18, 1918. This act extended the limits of the draft ages from 18 to 51; the government is given power to extend the act to Ireland by Order in Council, again demonstrating the indulgence shown to Ireland as the spoiled child of the Empire. By c. 51 of 7 and 8 Geo. V, November 29, 1917, entitled the Air Force (Constitution) Act, 1917, Parliament created an air force independent of the army and navy, with a separate reserve and auxiliary. The force is to be governed by a civilian board, called the Air Council, with a president a member of the Ministry. Some interesting phraseology occurs in this: throughout the noun "air-man" is used instead of "soldier," and the adjective "air-force" for "military."

Three acts deal with what may be called internal war measures. First is the Titles Deprivation Act, 1917 (7 and 8 Geo. V, c. 47, November 8, 1917). It provides for a committee of the Privy Council to report on holders of any dignity or title who have adhered to the enemy; such dignities and titles to cease upon the

report being accepted by Parliament. The act is declared not to affect title or succession to property, and any successor to an extinguished peerage "who is well affected to his Majesty's person and government" may on petition have it restored. Another of these acts is the Trading with the Enemy Act, 1918 (8 and 9 Geo. V, c. 31, August 8, 1918). Under this enemy banking businesses are prohibited with the United Kingdom for five years after the termination of the war, and thereafter until Parliament otherwise determines. Another statute directed against Teuton peaceful penetration is the British Nationality and Status of Aliens Act, 1918 (8 and 9 Geo. V, c. 38, August 8, 1918). It empowers the home secretary to revoke certificates of naturalization if the naturalized subject has traded with the enemy during the war, or has been sentenced to imprisonment within five years of naturalization, or has been a non-resident for seven years, or, by the law of an enemy state, remains a subject thereof in spite of his naturalization. A much more stringent rule is that no subjects of an enemy government are to be naturalized by Great Britain for a period of 10 years after the termination of the present war unless they are members "of a race or community known to be opposed to the enemy governments."

The Food Profits Act, 1918 (8 and 9 Geo. V, c. 9, May 16, 1918) provides for a forfeiture of double the excess if any trader sells food for prices higher than those fixed by the Food Controller.

Immediately after the armistice, the definition of the phrase "termination of the present war" came up for discussion, owing to the many statutes and regulations which terminate with the war. An act of November 21, 1918 (8 and 9 Geo. V, c. 59) provides that the date shall be declared by Order in Council, the date to be as nearly as may be the date of the exchange or deposit of ratifications of the treaty or treaties of peace. The proclamation may define the ending of the war as against one or several of the enemy governments.

On August 8, 1918, a complete codification of all the statutes on income taxes was approved (8 and 9 Geo. V, c. 40), and the bulk of this law can be appreciated as it requires 180 printed pages of the statute book for the codification.

A statute of interest to lawyers is the Juries Act, 1918 (8 and 9 Geo. V, c. 23, July 30, 1918). Owing to the difficulty in taking men from necessary employment during the war, the use of juries has gradually been diminished. This act provides that no party to a civil action is entitled to a jury as of right, except where the action involves issues of fraud, libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage. The act prohibits the use of juries in county court actions involving less than £5. It also empowers coroners to hold inquests without juries.

There are a number of statutes on subjects of social welfare, both before and after the armistice. On August 8, 1918, two interesting statutes were approved. The first is the Maternity and Child Welfare Act (8 and 9 Geo. V, c. 29); this provides for the creation of local maternity and child welfare committees in districts all over the country, to look after the health of expectant and nursing mothers, and children under five years of age; the other is the Education Act, 1918 (c. 39) which provides a complete reorganization scheme for national education, and is apparently the concrete result of the creation of the new Ministry under Dr. Fisher. The latter act was followed by a similar codification for Scotland, on November 21, 1918 (8 and 9 Geo. V, c. 48). The subject of education was again given attention in c. 55 (November 21, 1918) entitled the Teachers' Pension Act, 1918. In general, this provides that public school teachers after 30 years' service are entitled to retire at the age of 60, on half pay, and in addition to receive a lump sum payment of one and one-half years' salary.

On May 16, 1918 (8 Geo. V, c. 8) the Workmen's Compensation Act was amended so that illegal employment should be no bar to the right of the workman to receive compensation under the act; this is a subject on which courts have divided in this country. It is curious that on June 27, 1918, in the midst of war's alarums, and the slaughter of men by thousands, there was time to pass and approve the Horse Breeding Act, 1918 (8 and 9 Geo. V, c. 13); this provides for the licensing of stallions by the Board of Agriculture, and authorizes the revocation or suspension of a license if it appears to the board (among other things) "that the stallion has proved to be inadequately prolific, or is

calculated, if used for stud purposes, to injure the breed of horses by reason of its defective conformation or physique." The philosopher speculates on the difference between the care expended upon the breed of horses, and the neglected breed of men.

A gift of great popular interest is adverted to the Chequers Estate Act, 1917 (7 and 8 Geo. V, c. 55, December 20, 1917, a lordly Christmas present), in which Parliament accepts the gift from Sir Arthur Hamilton Lee, of his estate of Chequers in the county of Buckingham. He gives the estate with an endowment of £55,000 for upkeep, to be used as a country residence by the Prime Minister in office for the time being for all time. If the Prime Minister declines the privilege, a table of succession sets out the order in which the occupancy of the estate shall be offered; it is interesting to note that Sir Arthur Lee puts the United States Ambassador fifth in this enviable list, where he takes rank above the First Lord of the Admiralty, the Secretary for War, the Speaker of the House of Commons, and the Lord Chief Justice. A provision of the deed requires the trustees to maintain in the mansion house "four *permanent* indoor servants," but (needless to say) does not suggest where these priceless jewels are to be found. Another quaint provision of the deed, is that out of the income of the fund there is to be paid to the Prime Minister or other official occupant, the sum of £15 in cash for each week-end he chooses to spend on the estate; a week-end is defined as "any continuous period of not less than 36 hours, during any seven consecutive days." Mr. Balfour (who invented the week-end) no doubt was able to vote with a clear conscience for the bill. Anyone who has run the gauntlet of servants' tips in an English country house, will understand the forethought of this generosity on the part of Sir Arthur Lee.

Perhaps the most important of all the acts passed was the great fourth Reform Bill, the Representation of the People Act, 1918 (7 and 8 Geo. V, c. 64, February 6, 1918). This gives the right of suffrage to all men over 21 years of age, upon a six months' residence qualification, and to every woman over 30 who is either herself a local government voter (on real estate qualification) or is married to one. Besides a redistribution of seats on a basis of population (although no provision is made for future corrections or revisions), the act contains many provisions of

interest on the machinery of elections. For instance, it introduces the experiment of voting by proportional representation. The plan is to be used for contested elections for university constituencies where two or more members are to be elected. This includes four constituencies with nine members. The act also authorizes the drawing up by commissioners of a plan for the extension of proportional representation to 100 more seats; this plan to be approved by Parliament. The plan was drawn up for use in the last general election, but although approved by the House of Lords, was rejected by the House of Commons. The act creates a scheme for voting by absent voters, and specifically permits soldiers, sailors, and seamen to appoint proxies to vote for them. Another device is that every candidate for any office is entitled to the use of a suitable room in a public school building for holding a meeting, on payment of the necessary expenses.

The act was supplemented on November 21, 1918 (8 and 9 Geo. V, c. 47) by a statute expressly providing that women could be elected to seats in Parliament.

S. R.

ITALY.

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This very interesting and suggestive Italian brochure treats of "Strikes Among Public Employees" and its citations cover, in nearly every instance, a strike of government employees on railroads.

The author reviews the literature on strikes and lockouts generally and notes that there was very little *source literature* on the subject till 1912, when there appeared a carefully prepared "memoranda" thereon, prepared by the English Labor Department of the Board of Trades.

The discussion, however, is restricted to the consideration of strikes by public employees whom he divides into two classes: those engaged in "Publico Servizo" (as workingmen for the state on railroads) and those that advance the "Funzione Publica" (as those administering justice or maintaining public order).

Some countries try to solve the problem by working for a general industrial peace. Others legislate directly on the subject matter under discussion. The author believes that only in the general industrial solution will that of public employment be found. He finds that most of the legislation was prompted by the immediate needs of the moment and gave little or no consideration to the general economic principles involved.

He notes that the legislation on the general subject is divided into that which merely forbids strikes and lockouts pending an investigation (*e. g.,* Canada and Transvaal) and that which closes the disturbances and fixes the salaries and labor conditions under complaint (*e. g.,* New Zealand, New South Wales and South Australia).

He finds difficulty in defining public employment—the laws treating of it cover everything from governmental railroads to bakeries, fertilizers, pharmacies, funeral processions and public bath houses.

No definition of public employment attracts the author who vainly tries to fix as a measure of such service—the formal intervention of the state (as when it establishes a municipal bakery)—a state monopoly (as in Italy's control of the sale of salt and tobacco)—the character of general utility and general use (public utilities)—and the unaccumulability of the product by the consumer (as gas).

The great problem, as he sees it, is the avoidance of industrial strife and its consequent waste. He takes up the "right of public employees to strike" and tries to support the right of the workingman to freely dispose of his physical and mental forces and to assure himself personal, civil and political liberty without inviting the public ruin caused by the arrest of production and without demanding a revolutionary alteration of our conception of the nature and purposes of the state.

One class of the existing laws forbids the right of such employees to strike, making it a penal offence (as does Italy and France and Holland). Others forbid or limit the right of association among them (Belgium and Roumania).

He takes up the possibility of arbitration generally and discusses the weaknesses of voluntary and obligatory arbitration,

considering the laws of the United States as an example of the former and those of New Zealand as an example of the latter.

He reviews the laws of Denmark, Spain and Portugal which recognize in part or absolutely the right to strike on the part of public employees.

However, he offers no solution—he sees no way of avoiding these economic struggles. As the author sees the situation, all we can do is to bend our efforts to guide the struggle away from wasteful lines and guard against the attitude of "Après nous le déluge."

Tomatis, Bartolomeo: *"La Successione legittima Del Coniuge superstite."* Torino, 1913. 74 p.

The booklet deals with the property rights of the surviving widow in the estate of her deceased husband, dying intestate. The historic review covers the law on this subject in the early oriental countries and in Greece and Rome and in the early Germanic tribes. The feudal period, the canonical law, and the laws obtaining on this subject in the Italian cities of the mediæval period are also covered.

The second part of the book begins with a comparative review of the current law in Germany, Austria, Switzerland, Spain and France.

The modern Italian law is reviewed from the Napoleonic period to date.

Under the prevailing laws of Italy the surviving widow's share in her deceased husband's estate varies according to whether there also survives (1) legitimate children, (2) legitimate or illegitimate children, (3) illegitimate children only, (4) parents or other ascendants, (5) parents or other ascendants and illegitimate children, (6) sisters and brothers or their issue, (7) other relatives to the sixth degree, (8) other relatives beyond the sixth degree.

The share the widow receives varies accordingly and in each of the above cases, her share is as follows: In the first two cases, a life interest (l'usufrutto) in a share equal to that of each child (not to exceed one-fourth of the estate); in the third and fourth cases and in some of the fourth class, she receives one-third of the estate in fee; in the fifth case, one-fourth of the estate in fee:

in the sixth, one-third of the estate in fee; in the seventh, two-thirds of the estate in fee; and in the eighth, the entire estate.

Divorce is not permitted under the Italian law, but a widow may lose her right to participate in her husband's estate, if she has suffered a legal separation upon a cause furnished by herself. However, it must have been adjudicated and a decision must have been rendered by competent authority. Some doubt exists as to what constitutes such adjudication. Some of the more liberal writer's believe that such a sentence of separation, to bar the widow's participation, must be rendered by an appellate court.

Against the widow's share can be offset anything received by her from the deceased and if she be enjoying a life estate (l'usufrutto), the remaindemen can free the estate of her interest by a financial arrangement acceptable to all the parties, for the same reason as sustains our own rule against perpetuities. But this is a privilege granted only the legitimate children.

The book closes with a discussion of the benefits enjoyed by the surviving widow as a result of special legislation such as the workmen's compensation acts and similar legislation.

J. P. B.

SPAIN.

LEGISLATION.

After numerous efforts and much delay, the editor of this section has succeeded in receiving the "Anuario de Legislación Española" covering the space between November, 1916, and July, 1918, and herewith presents a review of all matters of legislation within that period which come within the scope of our task.

1916

November 13. A new "Tariff of Fees of Clerks of Courts and Lawyers" in Courts of First Instance, consists in two lengthy laws, of 135 and 134 articles respectively, with their respective minute details, which would be the despair of American litigants. A very few of these details will be mentioned, simply to show the principles of the system, which is quite novel to American practitioners.

I. *Fees of Clerks.*—In all kinds of cases at law in which liquidated amounts in money or in valuable things are claimed, the clerk shall receive 10 per cent of the litigated amount, up to

1500 pesetas; from 1500 to 3000 pesetas, 5 per cent of the amount in excess of 1500 pesetas; . . . . and so on in sliding scale, until, from 100,000 to 500,000 pesetas, ½ of 1 per cent on the excess after 100,000 pesetas; and from 500,000 to 1,000,000 pesetas, which shall be the limit of such reception of fees, 1/10 of 1 per cent on the excess over 500,000 pesetas. Then follow scores of fees to be paid in different kinds of suits other than those for liquidated amounts, running from 125 to 1750 pesetas, according to the nature of the case. In probate cases a sliding scale based upon the value of the property is prescribed, running from 8 per cent on a value of 3000 pesetas to ¼ of 1 per cent of values from 500,000 to 5,000,000 pesetas, which latter is the limit for these princely perquisites. In bankruptcy proceedings, the fees run from 9 per cent on 10,000 pesetas of assets, up to ⅛ of 1 per cent on amounts between 1,000,000 and 5,000,000 pesetas. Besides these liberal allowances, there are other fixed fees for different clerical acts in matters "incidental" to the principal proceeding. These fees are to be paid but once (fortunately for the litigants) and shall be paid by the plaintiff, and if the defendant should appear, be divided between him and the plaintiff equally; with other many provisions looking to the securing of payment not necessary here to mention.

II. *Fees of Lawyers.*—It will be noted that the attorneys have a less liberal share in the fruits of litigation than that enjoyed by the clerks, based on the amount in litigation. In all kinds of cases at law in which liquidated amounts in money or valuable things are claimed, the attorney shall receive, up to 1500 pesetas, 8 per cent of the amount in litigation; from 1500 to 3000 pesetas, 4 per cent on the excess above 1500 pesetas; and so on, until from 500,000 to 1,000,000 pesetas, which shall be the limit upon which he may receive fees, 1/20 of 1 per cent on the excess over 500,000 pesetas. For every sort of professional service, from drawing pleadings all along the line of professional activities, specific fees are fixed; but the attorney comes into his own—or his client's—more liberally in certain classes of proceedings other than those first mentioned: in suits for support, from 7 per cent on the first 1500 pesetas, to 1½ per cent on amounts between 3000 and 12,000 pesetas annually; in probate proceedings, from 6 per cent on the first 3000 pesetas of value of the estate, to 1/10 of 1 per cent on amounts between 500,000 and 5,000,000 pesetas,

and so on, until a lawyer who has a few good cases ought soon to be able to build castles in Spain.

November 17. *Bills of Lading for Freight Shipments* (Royal Order).—Bills of lading can only be issued for merchandise consigned to determined persons. For the collection of storage charges and demurrage, the rates are flat for the first 24 hours, and for the following days, according to a schedule stated in the order.

November 6. *Naturalization* (Royal Decree).—According to Art. I of the Spanish Constitution of 1876, Spanish nationality may be acquired by foreigners in two ways, by letters of naturalization, and by "vecindad," which is domiciled residence in a given place in the kingdom, with the ánimus manendi, for the requisite period of years. The new law governs the acquisition of vecindad by foreigners. In order to acquire vecindad ten years of continuous residence in Spanish territory, with the legal character of a domiciled resident, are required. This term begins to run from the date of the inscription by the foreigner of his domicile in the record of citizenship and vecindad of the registry of the municipal court (Juzgado), in the manner prescribed by Art. 110 of the law of June 17, 1870, and in the record of foreigners of the local civil governments according to Art. 9 of the royal decree of November 17, 1852. The period of residence prior to the present decree may be counted in the term if proven by a certificate of the registry of the same in any of said registers, or by any other creditable proofs. Five years domicile, however, is sufficient for the acquisition of vecindad and consequent Spanish citizenship, where the foreigner is able to show any of the following circumstances: 1. That he has married a Spanish woman. 2. That he has introduced or developed in Spain an industry or invention of importance not previously established there. 3. That he is the owner or manager of an agricultural or industrial enterprise or mercantile establishment. 4. That he has rendered important services to the nation. In no case can a foreigner gain vecindad or acquire Spanish naturalization through it, if he does not possess full legal capacity according to the laws of his country of origin nor if he is there subject to military responsibility, or to criminal responsibility in his native country or in any other, for an offence which is subject to extradition, nor who has been convicted in Spain

and sentenced to an afflictive or correctional penalty for an offence the nature of which carries with it infamy (desconsideración pública); nor, finally, those who are shown by the record not to have acquired vecindad for the purpose of naturalization. In no case can vecindad be solicited or obtained by persons under criminal process, those guilty of a repeated offence (reincidencia), those in contempt of court (rebeldes), and those undergoing execution of sentence.

The foreigner who wishes to establish his vecindad for the purpose of obtaining Spanish citizenship, must file a proceeding in the municipal court of his residence, of which the public attorney must be notified; and he must present to the court a petition signed by himself or by an attorney with special powers, together with a certificate of his registry of domicile in the public registries above mentioned, or other documents proving the fact; and also the following documents: Birth certificate, or similar proofs according to the law of his native place; certificate showing that he is of lawful age, or, if a woman, the same and one showing her civil status; marriage certificate, and of the birth of his wife, and birth certificates of all children subject to his patria potestad; certificate of the local consul of his nation, showing him to be in possession of full legal capacity and to be registered in the consular register of nationals; certificate that he has complied with his military service, or has been declared exempt, or that no such military service is required in his country; certificate that no proceedings are pending against him in his native country for criminal offences subject to extradition, and if any for political offences, stating the facts on which they are based and the penalty provided for them; certificate of the central registry of criminal process relative to the petitioner; certificate of the proper local authority showing his good conduct; and, if the declaration of vecindad is sought on any of the grounds reducing the period of residence to five years, a certificate showing the facts. All certificates from foreign sources must be translated and legalized; a single certificate issued by the consul general in Spain of the nation of the petitioner may cover the several matters required to be certified.

The municipal judge will transmit the record of all these documents, with his report upon the same, to the dirección general of

registers and notariat, which is charged with matters of this kind; and thereupon the ministry of grace and justice will notify the ministries of state and of gobernación, which will render their opinion in the matter, and the former ministry will render its decision upon the record. The record being returned to the municipal judge, together with the royal order approving the same and declaring the gaining of vecindad, the judge will furnish a copy thereof to the petitioner, and will receive his renunciation of former nationality and his oath to support the Constitution of the state, as required by Art. 25 of the civil code, and will cause the proper inscription to be made in the civil register of his court; he will send certified copies to the dirección general, to be added to the record kept there; and the dirección will publish in the Gazeta every six months a list of all such inscriptions made within the last six months.

Arbitration Treaty between Spain and Argentina (July 9, 1916).—"Art 1. The high contracting parties agree to submit to arbitration all questions of whatever nature which may arise between them and which do not affect the precepts of their respective Constitutions, whenever such questions cannot be settled by direct negotiation or by other means of conciliation. The following questions shall always be submitted to arbitration: 1. Differences concerning the interpretation and the application of treaties between the parties. 2. Relating to the interpretation and application of a principle of international law. The question whether any difference which may arise constitutes or not one of the kind herein provided for, shall likewise be submitted to arbitration. Disagreements as to the nationality of individuals are excepted from obligatory arbitration herein provided. The usual three arbitrators—one appointed by each party and the third chosen by these, and preferably all of them from the list of members of the Permanent Hague Tribunal—are provided, the third member to be always chosen from that list. The decision shall be by majority of votes, without making mention of any dissent, and the decision shall be final and without appeal. All differences which may arise between the parties with respect to the interpretation or execution of the decision shall also be submitted to the same arbitral body for decision."

1917.

Creation and Development of Industries (Law of March 3, 1917).—The government is authorized to favor the creation of new industries in Spain and the development of those already existing, in accordance with the specifications of the law, provided that the individuals or companies aided shall be Spanish and governed exclusively by the laws of Spain, and that at least 80 per cent of the employes of any such establishment be Spaniards, except where special technical knowledge is required. Government aid may be rendered either by direct loans of money, or by guaranty of a minimum interest on the capital invested, or by other means not involving direct economic aid, such as exemption from taxation and duties, deferred payments of the same, or reduction of taxes and duties to 50 per cent, or total exemption for ten years, bonuses on exportation, etc.

Bull Fights (Royal Order of February 28).—This is a very lengthy and elaborate regulation, in 114 Articles, the burden of which is to assure to the public its money's worth of the brutal sport, which must be just as advertised, and requiring that at least one "recognized champion" bull-fighter must take part in every "corrida" or bull-fight. In order not to delay the sport and keep the impatient audience waiting for bloodshed, it is required that each "picador" (the pike-man who rides the blindfolded horse on to the bull's horns to be torn to pieces) must have three old hacks properly saddled and ready, "so that there may be no delay on the pretext of adjusting the stirrups, or any other pretext, when changing horses." And much more—and all this just at the time when so-called "Barbarous Mexico" entirely abolishes the bloody "sport" as the most degrading influence in the life of the country.

Notarial Regulations (Royal Decree, April 9, 1917).—This lengthy regulation, of 347 Articles, reorganizes the college of notaries, and regulates the exercise of the profession, the making and keeping of their records, and filling of vacancies, etc., in accordance with the notarial law.

Weights and Measures, Metric (Regulations for the execution of the Law of July 8, 1892, approved by Royal Decree, May 4, 1917).—These regulations of the law, which is itself based upon the Treaty of Paris of September 26, 1889, framed by the International Conference on Weights and Measures, declares that "the

only legal weights and measures are those of the metric system," and prescribes, in 103 articles, the standards, denominations, capacities and other requirements of all kinds of weights and measures in use in the kingdom, penalties for violations and frauds, methods of verifying and correcting weights and measures.

1918.

Venereal Diseases (Royal Order of March 13, 1918).—This treats of permanent provincial boards of health, with special physicians, for the inspection and treatment of prostitutes.

Daylight Saving (Royal Decree of April 3, 1918).—On April 13, at 23 o'clock, the legal hour is to be advanced 60 minutes; on October 6 the normal hour is to be re-established. (Spain uses clocks divided into hours 1 to 24.)

Reorganization of Army (Law of June 29, 1918).—This law provides bases for the reorganization of the army, which is to be composed of three forces, the first line army, the second line army, and the territorial army; the second line constituting reserves. The law covers the entire subject.

Hours of Labor in Mercantile Establishments (Law of July 1, 1918).—There is established a continuous rest of twelve hours in the days from Monday to Saturday of each week, in favor of all persons who perform services, with or without pay, for the proprietor of any mercantile establishment, wholesale or retail. All such establishments are to open and close at the hours fixed by the local boards of social reforms, with the exception of drug stores, hotels, places for sale of foods, and a number of others; but all employees are to have the twelve hours' continuous rest during the week. During every work-day all employees shall have a rest of two hours to eat.

J. W.

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Francisco Penichet y Lugo: *Comentarios á la tutela.*

A scholarly and original treatise on the duties and restrictions of guardianship, giving especial attention to the point that, in reality, it is not the guardian, but the family council—that assemblage which in nearly all Continental countries, wields such a preponderating influence over matters affecting the domestic welfare of the people, and the complex questions growing out of the same—that exercises the functions of the trust. It is written

with great care, and is an excellent guide and book of reference for all persons, professional and otherwise, who may have occasion to familiarize themselves with the subject. (Hijos de Reus, Cañizares, dupldo, Madrid, 4to. Price 5.50 and 6 *pesetas.*)

José Castán. *La crisis del matrimonio.* (*Ideas y hechos.*) *Sociología del Derecho privado.*

This voluminous and exhaustive work on marriage in all its phases, and under every circumstance which may either directly or indirectly affect it, deserves the careful consideration of all lawyers and students of social conditions. It takes up and discusses, one by one, the various aspects of matrimony; the ways in which it is contracted; the proceedings instituted to abolish, or reform it; the essential formalities prescribed by law to render it valid; the capacity of the parties to assume its obligations; the mercenary character and deplorable consequences of unions entered into from interested and selfish motives; the results of sterility and barrenness, and their remedy; all with a wealth of examples, citations, and arguments which alike appeal to the philosophical and legal instincts of the ecclesiastic, the jurist, the scholar and the statesman. (Hijos de Reus, Cañizares, dupldo, Madrid, 4to. Price 10 and 10.50 *pesetas.*)

Pedro de Unzurrunzaga. *Averias, Derecho mercantil maritimo.*

In this treatise on losses at sea, the general principles of the law on the subject are carefully and succinctly laid down with the method of their application as established by the ordinances, port regulations, the code of commerce and the rules of civil practice authorized by the tribunals of the Peninsula. The book is unique, and of great value. (Hijos de Reus, Cañizares, dupldo, Madrid, 8vo. Price 3.50 and 4 *pesetas.*)

Jorge Silvela y Juan Barriobero. *Manual de práctica forense.*

The value of this excellent book on the practice of law, both civil and criminal, in the courts of Spain, cannot be overestimated. The works and decisions of the most eminent jurists of the age have been laid under contribution to elucidate and confirm the principles of legal procedure, and no important point bearing upon the subject (which is exclusively treated by the distinguished authors), appears to have been omitted. It is certainly the best manual on Spanish practice known to the reviewer. Hijos de Reus, Cañizares, dupldo, Madrid, 4to. Price 10 and 10.50 *pesetas.*)

Emilio Reus y Bahamonde. *Teoria orgánica del Estado.*

A profoundly philosophical and politico-legal production, in which the origin of the state, the conflict of authority which frequently arises between the various branches of the same, and the limitations of the exercise of national sovereignty exacted by the public welfare or political necessity, are handled in a manner indicative of unusual acquirements and thorough familiarity with the subject. (Hijos de Reus, Cañizares, dupldo, Madrid, 4to. Price 6 and 6.50 *pesetas.*)

E. Moliné. *Les costums maritimes de Barcelona.*

This work on the ancient and modern sea laws of Barcelona is written in the Catalan dialect. It is of great historical importance, and should be translated into some language accessible to the general public.

Barcelona is one of the oldest ports of Europe. Its maritime traditions date back to the days of Phoenician adventure and Rhodian supremacy. Even the Spanish Moslems have left upon its life the marks of their brief but influential domination. The knowledge of bills of exchange, together with other useful commercial inventions, inherited from the Tyrian colony of Carthage were communicated to Europe by the Jews of Barcelona during the intellectual darkness of the Middle Ages. The fierce and turbulent character of the population, due to the fusion of many races in which the African element predominated, and which has ever been a thorn in the side of the government, irrespective of its form, is not rivalled even by the proverbial and stubborn independence of the Basques. The Catalan has, from the earliest times, been noted for his commercial enterprise, hence a work of this description embodying regulations of great antiquity, cannot fail to be both interesting and instructive. Many copious historical, descriptive, linguistic, and bibliographical notes are appended to it, which contribute to its value and usefulness. (Hijos de Reus, Cañizares, dupldo, Madrid. 35 and 36 *pesetas.*)

S. Corella, *Legislación eléctrica, Recopilación de todas las disposiciones oficiales y sentencias del Tribunal Supremo y de lo Contencioso, que se relacionan con la industria eléctrica.*

A comprehensive and valuable collection of the decisions of the Supreme Court and other tribunals, having reference to the employment of electricity in both public and private enterprises,

with an exposition of the rights enjoyed and the liabilities incurred by its use and abuse. The authorities on this comparatively new branch of the law are more numerous and extensive in their scope than would, at first sight, be supposed. (Libreria de Augustin Bosch, 5 Ronda de la Universidad, Barcelona, 4to. Price 15 *pesetas.*)

J. B. F. Descurit. *Medicina de las pasiones ó las pasiones consideradas con respecto a las enfermedades, las leyes, y la religión.*

An essay on human passions with reference to diseases, law, and religion, evincing thorough knowledge of the subject evidently the result of laborious and extensive research and profound meditation. A spirit of philosophy rarely to be encountered in books of legal medicine pervades this work, which can be confidently recommended to others than members of the legal profession, for whose especial use it has been written. The author is to be congratulated for the admirable and exhaustive manner in which he has handled his topic and presented his conclusions. (Libreria de Augustin Bosch, 5 Ronda de la Universidad, Barcelona, 8vo. Price 3.50 *pesetas.*)

M. Sancho Izquierda. *Estudios de historia de la literatura juridica espanola.*

This is a learned and most interesting account of the origin, character and influence of the legal history of Spain. The ancient national *fueros* and chronicles, true sources of the law, of which the Peninsula possesses a greater number than any other country, are given special attention. No one can even hastily examine this book without being impressed with its worth, and again acknowledging the debt owed by modern lawyers to the old jurists of Castile and Aragon. (Libreria de Agustin Bosch, 5 Ronda de la Universidad, Barcelona, 4to. Price 5 *pesetos.*)

S. P. S.

SWITZERLAND.

The year has been one of unusual interest to the student of public affairs. Both legislature and federal council have produced an immense amount of work and despite the pressure of the war and the increasing anxieties imposed on the government by reason of the difficulties experienced in obtaining adequate supplies of fuel and food for the country there has been no dis-

position to slight either ordinary legislation or the demands of constitutional reform and progress.

As in the preceding years of the war the chief burden has remained with the federal council, the country's executive of seven members; it would be impossible within the space allotted to this article to recount all the measures, chiefly of an economic character, which mark the council's activities. Among these acts, however, we may note as of especial importance an ordinance of January 15, 1918, which has in view the enforcement through the cantonal governments of cultivation of all land in the country capable of being employed for the growing of crops of any serviceable description whatsoever. The cantons are asked to compel owners or lessee of land to cultivate, or, failing such cultivation, the land will be cultivated for the public account by cantonal or communal authorities.

A Federal Food Bureau has been created and in addition to previous minute regulation of the supply and sale of milk, cheese and bread, these have now been taken (sequestré) under the direct control of the government, and the scope of previous provisions under which governmental subsidies have been granted—the government paying the differences between established market values and fixed figures for supply—has been much enlarged.

In view of an increasing German propaganda, stringent decrees have been issued touching preservation of order; public meetings have been placed under supervision, and importation of arms and explosives forbidden; at the same time the mass of foreign deserters and delinquents constantly crossing the Swiss frontiers and threatening the country's welfare has been made the subject of strict regulation, while the entry of demobilized soldiers of the Central Powers is similarly dealt with in council decrees.

On November 15 the council issued an address to the Swiss people, in view of the approaching conclusion of the European war, and called upon all citizens to repress growing symptoms of unrest and disturbance, due to foreign incitation, and constantly threatening by strikes and agitation the country's neutrality and the very foundations of its government.

The widely-awakened interest in the Rhine as an international stream, and the determination in many quarters to bring its regulations more nearly in accord with the principles pro-

claimed a century ago at the Congress of Vienna, led the council, on June 22, to issue an ordinance granting a federal subsidy to Canton Basel (Bâle-Ville) for the construction of elaborate works on the Rhine's right bank at the German border, destined to create a port of entry suited to the important international rôle assigned to the river in the hopes of those looking to an expansion of Swiss commerce along this great natural highway after the war. Swiss present plans are specially centered upon the river-stretches between Basel and Strassburg; above Basel and between Constance and Schaffhausen navigation is regulated by the convention with Baden of September 22, 1867, as modified June 22, 1915. The physical adaptation of the river to commercial needs through the creation of an adequate channel is receiving widespread attention, as are also the diplomatic aspects of the problem of securing an assured free international waterway from Rotterdam to Swiss borders; this is, in fine, a major problem of Swiss public thought now earnestly turning to post-war measures of reconstruction. It should be added that a constitutional revision to be known as Article 24*ter*, in the interest of wider federal powers touching navigation is under contemplation. Nor has the increased cost of government maintenance on every side deterred Parliament from its customary care of cantonal development, as is witnessed by a grant of over a million francs to Canton Aargau for the widening and deeping of the Bünz between Muri and Wildegg.

In another field of activity we may note the declaring in force on February 1 of Articles 30-35 of the carefully drawn factory act (Loi fédéral du 18 Juin, 1914, sur le travail dans les fabriques), these being the sections dealing with arbitration (offices de conciliation), etc. At the same time (February 1, 1918), it was ordered by the council (exercising its plenary war powers) that the cantons might extend the act's provisions to subjects beyond the scope of its text.

On March 23 the Italian legation at Berne notified the federal council of the formal adhesion on the part of Greece to the convention for the creation at Berne of an international office of public hygiene; there have already adhered, Argentine, Belgium, Bolivia, Brazil, Bulgaria, Denmark, Spain, Chile, the United States, France (also Algiers and Indo-China), Great Britain (Australia, Canada, India), Mexico, Monaco, Norway, Holland,

Peru, Persia, Portugal, Russia, Servia, Sweden, Switzerland, Turkey, Tunis, Uruguay, Egypt.

On December 7 the federal council announced the conclusion of a treaty of friendship with China which, when ratified by Parliament, will bring Switzerland into direct diplomatic relation with the great oriental republic.

Of much importance, also, is the projected revision of the Swiss copyright law. The present law dates from 1883, a date three years prior to the formation at Berne, in 1886, of the international union for the protection of literary and artistic property. The union was revised at the Paris conference of 1896 and at the Berlin conference of 1908, a protocol being added March 14, 1914. The Swiss law needs revision to bring it into line with these more recent and more liberal international regulations, lest Switzerland be compelled to accord to foreign work various privileges denied to Swiss authors under their own statutes, the convention of 1908 having been ratified by the Swiss Parliament.

In the constitutional field an initiative petition, supported by the democratic-socialists, for a permanent direct federal tax (Switzerland has adopted for the period of the war a federal tax and an excess profits tax) was rejected at the polls on June 2 by a vote of 325,814 to 276,735. The stamp tax amendment, however, adopted May 13, 1917, was made the subject of an appropriate enforcing statute October 4, 1917, which statute was declared to be in force April 1, 1918, by an ordinance of the council, the referendum period having developed no call for a vote.

On December 11, 1918, as our record closes, the two parliamentary councils declared the formal acceptance by the people on October 13, of an initiative petition calling for adoption of proportional representation in national council elections. Article 73 of the Constitution, which had formerly regulated elections to the national council, will now, therefore, be amended to read, "Elections to the national council are direct. They take place in accordance with the principle of proportional representation, each canton or half canton forming an electoral college. Federal legislation will provide appropriate regulations." A statute has been drafted and it is proposed to so fix the date of the next election that the new council will meet at Berne on the first Monday of June, 1919.

The subject of cattle sickness is dealt with in a federal law of June 13, 1917 ("loi fédérale sur les mesures à prendre pour combattre les épizooties"), which revised earlier legislation; this elaborate legislation was finally declared in force by the federal council on January 25, 1918.

The long and carefully-debated outline of the new penal code was laid before Parliament on July 23, while on November 26 the plan of a military penal code was similarly submitted. There is still pending an initiative which reached the chancellor on August 8, 1916, signed by more than 118,000 voters and praying the insertion of a constitutional article to be numbered 58*bis* suppressing military judicial process ("la justice militaire est supprimée").

A parliamentary ordinance of October 2 raises the salaries of members of the federal council to 25,000 francs each, while the President will receive 27,000 francs and the chancellor 18,000. In the December elections Parliament chose from the federal council M. Ador as President, and M. Motta (President during 1915) vice-president. Ador, as president of the International Red Cross Committee at Geneva, has been a commanding figure during the war and brings to the presidency experience gained in many public posts of distinction. At the same time the 24 judges of the federal tribunal were elected for a six-year term, and M. Ernest Picot, of the Geneva Cour de Justice, was chosen president of the court, while M. Adolphe Steiger, vice-chancellor, was elected chancellor to succeed the venerable Schatzmann, resigned after nearly forty years' honorable service. During the last nine years of this long period he has been chancellor, being the third person to hold that office under the Constitution of 1848. The Foreign Relations Committee of the federal council Délégation du Conseil Fédéral pour les Affairs Étrangères) during 1919 will be composed of Ador, Mott, Calonder (the retiring President) and Schulthess, chief of the Department of Public Economy.

It is probable that the number of federal councillors will soon be raised from seven to nine, and that new legations will be established abroad. Among reconstruction post-war measures in view are the *popular* election of the federal council and a popular federal initiative in *legislation* as well as, at present, in *constitutional amendment.*

It should be added that a former agreement with Germany which was renewed on May 22, and under which Switzerland was to be enabled to receive 200,000 tons of coal monthly and 19,000 tons of iron and steel, has lost its importance by reason of the armistice, although, during the last months of the war it had been the subject of much discussion and had originated not a few difficulties in actual operation.

G. E. S.

3. ASIA.

CHINA.

LEGISLATION.

THE CITIZENSHIP-LAW: LAW NO. 4.

(Section 1 of Chapter of the Laws of the Administration of the Interior.)

Promulgated November 19, 1912; Amended December 31, 1914.

CHAPTER 1. NATURAL CITZENSHIP.

Article 1. The following persons are declared to be citizens of the Chinese republic (*lit.*, The Republic of Chung Hua):

1. One whose father was a citizen of the Chinese republic at the date of his death.

2. One born after the death of his father, the latter being a Chinese citizen at death.

3. One born in Chinese territory and his mother being a Chinese citizen, although his father or the latter's nationality is unknown.

4. One born in Chinese territory, whose parents are either unknown or without known nationality.

CHAPTER 2. HOW TO ACQUIRE CITIZENSHIP.
(Naturalization.)

Art. 2. The following aliens may acquire Chinese citizenship:

1. The wife of a Chinese citizen.

2. One publicly acknowledged as child by his (or her) father, who is a Chinese citizen.

3. One (a) whose father is unknown or (b) who has not been acknowledged by his father, but is acknowledged by his mother, who is a Chinese subject.

4. One who is adopted child of a Chinese citizen.

5. One who has been naturalized.

Art. 3. The following aliens may acquire Chinese citizenship by public acknowledgment:

1. One who is still a minor according to the law of his own country [this probably refers to the case of alien parents who have acquired Chinese citizenship and whose children have not yet been naturalized].

2. One who is not the wife of an alien.

Art. 4. (a) Aliens and persons having no definite nationality may acquire citizenship with the approval of the Ministry of Interior. (b) No person shall be allowed to acquire citizenship by the Ministry of Interior unless he or she possesses the following qualifications:

1. Has lived continuously in China for five years or longer.

2. Is 20 years of age or older, and considered by the law of China or of his own country as one capable of doing work.

3. Is of a good moral character.

4. Possesses sufficient money, property or means to earn his or her own living.

5. Has no nationality or has lost original nationality after acquiring Chinese citizenship.

With reference to the acquirement of Chinese citizenship by persons having no definite nationality, the two preceding clauses shall be interpreted according to the laws of the Chinese republic.

Art. 5. Unless naturalized together with her husband, no wife of an alien is allowed to acquire Chinese citizenship.

Art. 6. The following aliens residing in China at the time but not possessing the qualifications set forth in clause 1 of subarticle (b) of Art. 4, may also acquire Chinese citizenship.

1. Either father or mother had at some time acquired Chinese citizenship or was a Chinese citizen.

2. Wife was at some time a Chinese citizen.

3. Born in China.

4. Having resided continuously in China for 10 years or more. The aliens mentioned in clauses 1 to 3 hereof shall not be allowed to acquire Chinese citizenship unless they have resided continuously in China for three years or

more; but this provision shall not apply to an alien, whose father or mother was born in China as mentioned in clause 3 of this article.

PROPOSAL TO IMPORT THE JURY SYSTEM.

On August 8 last, a member of the American Chamber of Commerce of China offered a resolution at a meeting of its Executive Committee, looking toward the importation of the jury system for American courts in China. The resolution was afterward withdrawn by its author and never came before the Chamber, but a letter concerning it sent by the Executive Committee on August 24 to the Far Eastern American Bar Association called forth a memorial, signed by members thereof, in which the whole question of the jury, as related to conditions in China, was discussed. It is in part as follows:

It is evident that whoever framed the resolution on which the letter of August 24 is based was not very clear in his own mind as to just what he did want, for after reciting that the resolution calls for "Trial by Jury," the letter proceeds to speak of "competent assessors." Now assessors are quite different from jurors. The former, two or three in number, sit on the bench with the judge and usually pass on the law as well as the facts. Jurors, normally 12, sit in a separate box, deliberate apart from the judge, and pass on the facts only. Assessors are already provided for the consular courts and have been ever since their establishment (because the consul is not usually a lawyer), but are almost never required; which demonstrates that there is no general demand therefor.

Assessors are not provided for the United States Court, because its judge is expected to be one capable of adjudicating cases without their aid; but the laws in force here provide something better than assessors, viz., *referees*. (Dist. of Col. Code, Sec. 412 et seq.; Alaska Code, Sec. 1044 et seq.) Whenever a case arises involving a long account or requiring expert knowledge of some particular business or subject, the judge may, and will appoint a referee who will serve both him and the parties by investigating and reporting on the technical points of the case.

Apparently the author of the resolution referred to was actuated by the belief that "no legitimate argument can be advanced against the principle of trial by jury." It is to be regretted that

he could not first have consulted with some members of this Association who have had actual experience with the jury system and could have suggested any number of "legitimate arguments" against it. And if he will take time to read the literature of the subject he find that from the days of the great English law reformer, Jeremy Bentham, a century and more ago, there has been a steadily growing sentiment in favor of substituting something else for the jury. This sentiment has not been confined wholly or chiefly to lawyers. It has spread among laymen and today business men in the United States make every effort, even sacrificing perfectly just claims, to avoid jury trials. Symptoms of this are the creation of boards of arbitration and conciliation by the business organizations of all the large American cities, the eagerness with which these are preferred to juries, and the desire of the best lawyers to waive a jury wherever possible and to ask, where necessary, referees instead.

As to criminal trials public sentiment was aroused by the monstrous miscarriage of justice in the Thaw case which could hardly have occurred in a trial to a court alone. To import the American jury into China now would be to reverse the trend of affairs in the home country. In Continental Europe, of course, the jury as we know it has long been discarded. And in the Philippines, which is American territory where American judges have been administering justice for 20 years, the jury has never been known.

FUNDAMENTAL DEFECTS.

The jury is a survival. It has come down to us from a remote age when what we now call "law" was mere local custom of which every man knew as much as any other, just as in the Chinese interior village of today. But the rise of specialism has rendered the jury obsolete. Modern law has become such a vast and complicated subject that only a specialist therein, prepared by years of unremitting study, can apply it properly. To even the most intelligent laymen who are called as jurors the whole subject is bewildering. And the system is so designed that the most intelligent laymen rarely can be jurors. For only those can qualify who have never "formed or expressed an opinion" *re* the subject-matter of the controversy, and that usually excludes all who read the newspapers.

As already stated the jurors are supposed to pass on the facts; but they must apply the facts to the law, and that is no easy task even when the law is explained by clear instructions from the judge. Moreover the weighing of conflicting evidence and the deduction of logical conclusions from concrete facts is by no means the task of an amateur. It is the work of an expert and the man who makes a business of it is necessarily better qualified than one who is called in casually for a particular case. You gentlemen of the Chamber of Commerce do not entrust the details of your *private* business to unexperienced hands; you want experts. Why should you not also demand them for the important *public* business of administering justice?

THE JURY IN OPERATION.

Bearing in mind these fundamental defects of the modern jury system let us notice how it works in practice and how many "legitimate arguments against it" appear in the course of the ordinary jury trial.

1. The jurors must be drawn, and that requires the time and attention of several officials. Their selection is almost sure to be criticised, for however much some people who know nothing about the jury, may praise it, those very ones are likely to object most strenuously when they are called away from their business to serve as jurors and to criticise those who call them. It will be remembered that when assessors were more common in the Consular Courts business men objected to serving. The litigants are likewise apt to criticise the panel if it happens to omit their friends or include their enemies. The summoning of the jurors takes more time of some official and calls him away from other duties.

2. When the jurors appear they must be impanelled, sworn and examined for challenge by the lawyers of both sides. And each side is allowed a certain number of peremptory challenges (without giving any reason) besides an unlimited number of challenges for cause (bias, etc.). This process may take a long time. In important cases days are sometimes consumed in getting a jury that will pass challenge and by that time most of the intelligent jurors have been excluded.

3. When the trial actually begins it must proceed much more slowly than trials by the judge, for he must be careful to exclude

all evidence that might mislead the jury and the lawyers are always more prolific of objection on that account. When a case is tried before a judge alone he can commit no error in receiving evidence because he is supposed to discriminate between the admissible and the inadmissible. But in jury trials the admission of improper evidence will cause a reversal on appeal and that means interminable delay.

4. When finally the evidence is all in the argument requires much more time, because the lawyers are talking to men inexperienced in the weighing of evidence and less accustomed to follow such arguments. Besides there must be an argument to the jury on the facts and another argument to the judge on the law, whereas in trials to the court alone these are combined.

5. The jury then retires to deliberate and must be kept together until a verdict is reached or an agreement found impossible. A court officer must give his whole time to guarding the jurors and preventing communication between them and outsiders while the judge and clerk must remain in the background to be ready for the verdict or to answer any questions which the jury may propound. And the law requires that the jury be not discharged until all possibility of an unanimous agreement has vanished. Hence a jury is often kept for a week in the same room, day and night, because one juror stands out against a verdict; and sometimes the jurors are reduced to bread and water to compel an agreement. Jeremy Bentham said that the "system of requiring unanimity was equivalent to enforcing perjury by torture." (Stephen, The English Utilitarians, I, 287.)

6. After the verdict is in the defeated party usually presents a motion for a new trial. And it is a rare case where a review of the evidence will not disclose the admission of some item which "might tend to mislead the jury," or some other trivial circumstance requiring a new trial. And that means that the whole trial must be repeated. Whereas if the case had been tried by the judge alone he could correct any feature of his judgment. But the jury's verdict cannot be altered in the slightest. It must be accepted exactly as it is or there must be an entire new trial.

Now during all this time the jurors are kept away from their respective occupations, (night and day in part) the court offi-

cials are taken away from other duties to look after the jury, the parties and witnesses must remain much longer, the lawyers too must spend more time and hence must charge their clients more, the government must pay jury fees, and all this unnecessary expenditure of time and money merely in order that twelve amateurs may do what one expert ought to do much better and much more speedily.

"Economic waste involved in the jury system is tremendous at all times," observes Charles A. Boston, a prominent New York lawyer and member of the American Bar Association, "because it sets thirteen men to doing one man's work. In most equity cases (*i. e.,* those tried by a judge alone even in the state) one man is adequate to do the work. The disputes in equity involve as serious question of fact and every consideration of justice is as well met." (Journal of the American Judicature Society, II, 22.)

THE JURY IN CHINA.

In order to appreciate the better just how the jury would work in China let us take a concrete example. The United States Court recently held a session at Tientsin to try an important criminal case. There were sixteen witnesses for the prosecution alone and several complicated questions of law; but as all concerned were anxious to dispose of it speedily the judge was able to hear all of the testimony and both of the arguments in less than one day. The transcript of the evidence was then forwarded to him at Shanghai where he wrote up his decision.

Now consider what would have happened had a jury been required. In the first place the case was a sensational one and it would have been very difficult to find twelve Americans or even a less number in Tientsin who had not formed an opinion regarding it. The accused might well have offered challenges for cause or peremptory ones to so many that the required number could not have been obtained. In this way the accused could have prevented any trial at all and compelled a miscarriage of justice which would have been a reproach to American institutions. And the same result might easily happen at Canton, Hankow, or any other outport where the court sits. Indeed such a result is far from impossible in Shanghai. How many Americans here could qualify as jurors in a suit arising out of the baseball scandal?

Your committee states

"that the American community in China, which now consists of more than 6000 individuals, is of sufficient size to enable the judge to select a jury of competent assessors to sit with him in connection with the trial of cases in the United States Court."

But assuming that there *are* 6000, at least half of these are missionaries, mostly stationed at isolated points in the interior and not available for jury duty. Of the remainder probably one-half are women, children and men beyond the jury age. That leaves about 1500, mostly concentrated in Shanghai and similar centers where practically every case is a subject of household discussion. It would be strange if the course of justice were not sometimes blocked by the impossibility of getting jurors who had not "formed or expressed an opinion."

But assuming that a proper jury could have been secured in the Tientsin case there could still have been much greater delay. The judge and court officials would have been obliged to remain there until the verdict was rendered and what was disposed of in a day might well have taken a week. Surely nothing is to be gained by going back to such a system.

"The committee realizes that we have had no reason to complain and expect none in the immediate future."

Well it is not a good business maxim to let well enough alone. The truth is that we Americans in China are very fortunate to be free from the jury system, for thereby many improvements and reforms in legal procedure are rendered possible here which would not be at home. The judge of the United States Court is now at work on a simplified code of procedural rules which will be entirely feasible under the present system but which will have to be changed completely if the jury is to be imported. He has already drafted and sent out a simplified set of rules of evidence, and that work would need to be done over again if we are to have a jury. Why throw away opportunities for real achievement and overturn the system in vogue ever since the court was established, if "we have had no reason to complain" of it?

But some may say the jury we want is not the jury as it is in the States, but a smaller one. The defects of the jury, however, as above set forth are inherent in the system and cannot be

eliminated by reducing the size. Moreover if Congress ever legislates on the subject it is very unlikely to give us a different jury than it is familiar with and the average member of Congress knows only the jury of twelve whose verdict must be unanimous.

Then others may say, the British have a jury, why not the Americans? In H. B. M. Supreme Court, to satisfy English conservatism a small jury of five or six is allowed in serious criminal cases and in a limited number of civil cases like libel. But do the results in such cases encourage us to do likewise? To take recent examples of both classes, a British jury in Shanghai acquitted an accused who was clearly shown to have murdered a Chinese, and the murdered man's family would not have received one cent had not a British judge, *sitting without a jury,* given them a judgment in a civil case.

The other instance is a famous libel suit where a British jury awarded $25,000 gold to a prominent physician for the writing of a letter in which his name was not mentioned and which was not shown to have caused him the loss of a single patient or one copper cash. Of course that judgment was set aside by the judge but if the judge must be constantly watching to correct the jury why not let him try the case? It is more economical, more expeditious and in the vast majority of cases more satisfactory.

The American Chamber of Commerce can help this Association to improve American justice in China by supporting the pending court bill, which provides incidentally for a United States Commissioner who could render all the assistance which a jury can with none of its evils. The fears of "some future incumbent" which your committee expresses could be provided against by giving the Court of Appeals power to review the facts as well as the law in all cases. And on all these questions we would suggest that if the Chamber will, before taking action, consult the Judge of the United States Court, who is one of your honorary members and the chief American judicial officer in China, it will find him more than willing to help and advise. But to import into our judicial system here the American jury with all its barnacles and excrescences would not only be a long step backward, it would be in some cases a tragedy and in others a comedy.

C. S. L.

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The Legal Obligations Arising Out of Treaty Relations Between China and Other States, by Min-Ch'ien T. Z. Tyau, LL. D. Commercial Press, Limited, Shanghai. Pp. 304, I-XXII.

The author of this work is at present editor of the *Peking Leader* and lecturer on International Law at the Tsing Hua College, Peking. His degree was obtained at the University of London and his book was originally prepared as a thesis therefor. Considerable portions of it have already appeared in serial form in the *China Press.*

After an historical introduction reviewing China's treaty relations and following prefatory notes by Sir John McDonnell and Wu Ting-fang, the book proceeds to discuss in successive parts, the political, economic and miscellaneous treaties of China, including under the latter head those relating to missionaries, of whom it is said (p. 188):

"What were formerly known as missionary questions are now practically non-existent, and today we no longer hear of missionary riots and the consequential claims for indemnity."

It is to be hoped that this is true; but in the light of certain recent events in the interior judgment must be reserved. The foreign, professional reader will naturally be most interested in Chapter III of Part I entitled "Consular Jurisdiction and Extraterritoriality." Dr. Tyau's treatment of the last named subject leaves much to be desired and his objections to the system are easily answered. They are three, viz.:

(1) *That no counterclaim is allowed against a foreign plaintiff.*—His sole authority for this objection is a case, originating in Japan and decided in England in 1895, where the defendant pleaded a counter-claim for damages caused by a marine collision, *i. e.,* a tort. But nearly a generation earlier (1866) the Attorney General of the United States had laid down the rule since followed in American extraterritorial courts (IV Millard's Review, 415) that set off may be pleaded against a foreign plaintiff so far as it is a defence and to "the extent of the claim asserted." And even the English case cited does not seem to conflict with this rule as regards a counter-claim arising out of a contract, for it expressly approves "the respondent's using every means of defence to the appellants' claim."

Moreover this objection, even if tenable, is clearly one for the foreigner in China and not for the native. The latter can hardly complain because the foreigner, in his own court, may not counter-claim against the native.

(2) *Disparity of Penalties.*—Dr. Tyau's chief example in support of this objection is the following:

"Accidental homicide is excusable in Western law; in Chinese law the accused may not be imputable, but is nevertheless made to compensate the deceased's family."

But this statement is incorrect. Under Arts. 324 *et seq.* of the Provincial Criminal Code of China the penalty, as in western codes, is a fine only; provision is made "compensate the deceased's family." And this code is applied by the "mixed courts . . . . in the Shanghai foreign settlements" where, according to Dr. Tyau, the supposed "disparity" is most "oppressive."

3. *Uncertainty of Punishment.*—In support of this objection the only example is an alleged practice of sending prisoners home "for final trial and punishment." But the only power cited as doing so is Germany whose courts are not now functioning in China. The author admits that "for practical purposes the United States Court for China is supreme" and that the British Court does not follow the practice complained of; and an impartial inquiry will probably show that punishment is quite as certain in these extraterritorial courts as in those functioning on their own soil.

The above are all of the objections to extraterritoriality which the book offers; and the author seems, unfortunately, to have passed over an opportunity for real service to the Chinese people by pointing out the benefits which have been, and may still be, derived from the presence of these extraterritorial tribunals in their midst. For it must be remembered that China never produced an independent judicial, as distinguished from administrative, system. It had, therefore, no native procedural law as such and has been obliged to seek one from abroad. And what better opportunity could be offered for studying the procedure and workings of foreign courts than by having them in actual operation within her territory? And China would be the gainer

if her recently formed legal profession would seek admission to these courts (which would readily be granted upon a basis of reciprocity) and learn their ways by actual practice. This is but one of the possible benefits of extraterritoriality. Our limits forbid a discussion of others which the author might have mentioned with profit. And he could have rendered no greater service, in conection therewith, to readers of his own nationality than to have stated frankly that the surrender of extraterritoriality now would unload upon China a burden which she is ill prepared to shoulder and which would inevitably prove disastrous. What better excuse could be offered for Japanese intervention, *e. g.*, than an attempt by the Chinese courts now functioning to administer justice to foreigners? On this point one need hardly do more than quote items like the following which appeared in the *Shanghai Gazette* (a Chinese newspaper) of May 15:

"You people in the ports know nothing of the state of the interior," writes a Honan correspondent to a Hankow paper. "There is no redress. One man has just gone to Kaifeng to appeal. He sold a mule, and the purchaser refused to pay or return the mule. He foolishly went to the Boxer magistrate who fined him $200 and let the swindler keep the mule."

But while we cannot accept all of Dr. Tyau's conclusions or statements we do not underestimate the value of his book in other respects. As Dr. Wu well says in his preface it "gives evidence of wide and painstaking research." The author presents a mass of material probably much greater than has elsewhere been collected on this particular theme and his display of references in footnotes, according to thesis requirements, renders it very useful to the professional reader to whom the work will chiefly appeal.

AMICUS.

JURISPRUDENCE.

Our readers may be interested to learn that the decision of the United States Court for China in Everett *vs.* Swayne & Hoyt, partially reported in American Bar Association Journal, III, 276-286, and involving the effect of the blacklist on a common carrier's liability, has been affirmed in *toto* by the Court of Appeals of the Ninth Federal Circuit, the opinion being written

by Judge Ross and concurred in by both of his associates, Judges Morrow and Hunt. On account of its importance and general interest the decision is reproduced below:

Ross, Circuit Judge (Filed January 6, 1919):

This case comes here from the United States Court for China. It is a writ of error sued out by the defendant to an action there brought by the present defendant in error to recover damages for the refusal of the plaintiff in error, a common carrier, to receive, without lawful excuse, certain cargo offered it by the plaintiff to the action for shipment from Shanghai by the steamer "Yucatan," which had been advertised to be on the berth at Shanghai for freight to San Francisco.

The facts are practically undisputed, and are, briefly, these:

Swayne & Hoyt was a California corporation having its principal place of business at San Francisco, and was therefore an American citizen, and was a common carrier of freight between the Orient and that among other places. It had as its agent at Shanghai a British corporation styled Jardine, Matheson & Company, Limited, and had under charter the said steamship for a voyage from San Francisco to China and Japan and return to San Francisco and other Pacific coast ports of the United States.

Prior to the arrival of the "Yucatan" at Shanghai the plaintiff in the case applied to the agent of the defendant thereto for space in the ship in which to ship certain goods, in response to which application, after one denial of it, the agent agreed to provide the requested space upon condition that the application be approved by the British consul at Shanghai. That conditional acceptance was refused. The cargo offered for shipment by the plaintiff was being handled by him for German subjects, by reason of which fact he was blacklisted by the British Government, and all British subjects, including the agent of the defendant corporation, inhibited from dealing with the plaintiff respecting this particular shipment as well as all other such shipments. The defendant through its British agent having refused to accept the cargo offered by Everett, the action was brought, resulting in the judgment of the court below in his favor for $2700.20, with costs.

But two questions of law are involved, first, whether the court below had jurisdiction of the subject-matter of the action, and, if so, then, secondly, its merits.

By Section 1 of the Act[1] of June 30, 1906, creating the court below it is given "exclusive jurisdiction in all cases and judicial proceedings whereof jurisdiction may now be exercised by United States consuls and ministers by law and by virtue of treaties between the United States and China, except in so far as the said jurisdiction is qualified by Sec. 2 of this act." The qualification specified in Sec. 2 of the act has no bearing upon the present case, and, therefore, no further mention of it need be made.

At the time of the passage of the Act of June 30, 1906, there were in force the provisions of Secs. 4083, 4084 and 4085 of the Revised Statutes, by which certain judicial authority was conferred upon United States ministers and consuls in certain countries, including China, which jurisdiction embraced all controversies between citizens of the United States or others, provided for by its treaties.

The treaty with China bearing upon the present question was that of June 18, 1858,[2] and conferred upon the United States the right to appoint consuls in various parts of China. Its XXVIIth article is as follows:

"All questions in regard to rights, whether of property or person, arising between citizens of the United States in China, shall be subject to the jurisdiction and regulated by the authorities of their own government; and all controversies occurring in China between citizens of the United States and the subjects of any other government shall be regulated by the treaties existing between the United States and such governments, respectively, without interference on the part of China."

It is the contention of the plaintiff in error that the words "in China" in the foregoing article qualify the word "citizens" and not the word "arising"; in other words, that a residence of the parties in China is essential to the existence of any jurisdiction in the court. We think it obvious that such a construction of the provision is wholly inadmissible, for the subject-matter thereby dealt with is *controversies arising in China*. The first clause of the provision relates to controversies in regard to rights, whether

[1] 34 U. S. Stats. at Large, 814.
[2] 12 U. S. Stats. at Large, p. 1029.

of property or person, there arising between citizens of the United States, and declares that they shall be subject to the jurisdiction and be regulated by the authorities of their own government; and by its second clause it is declared that all such controversies there arising between citizens of the United States and the subjects of any other government shall be regulated by the treaties existing betwen the United States and such governments, respectively, in each instance without interference on the part of China. We regard it as clear that this is the very plain meaning of the article in question. As said by counsel for the defendant in error, the bare reading of its second clause is all that is necessary to show that the words "in China" there used, fixes, as the basis of the jurisdiction of the court, the place of the origin of the controversy, and not the residence of the parties thereto. No sound reason is suggested why a like construction should not be placed upon the first clause. To adopt the view urged by the plaintiff in error would be, in effect, to hold a consular court in China vested with jurisdiction of a controversy between American citizens arising in the United States if they happened to be residents of China.

Upon the merits we think the case equally clear.

It does not admit of doubt that a common carrier, with certain well-established exceptions, is under legal obligation to carry the goods of any member of the public who may tender them for carriage. That such a carrier subject to such legal obligation may show that it was prevented from performing it by act of God or a public enemy, or by some other cause over which it had no control, is readily conceded, but in all such cases the defence is an affirmative one, and the burden is upon the carrier to both plead and prove it.[a]

At the time of the occurrences in question, England and Germany were at war, but the United States was not; on the contrary, this country was then observing strict neutrality between those belligerents. How, then, can it be properly held that the performance of the clear legal duty of an American carrier to receive and transport goods tendered for carriage, by an American citizen, is excused on the ground that the British Government had

[a] 1 Michie on Carriers, Sec. 381; Chicago, etc., R. R. Co. *vs.* Wolcott, 39 N. E. Rep. 451.

forbidden its citizens and corporations, one of which happened to be the agent of the American carrier, from receiving the tendered freight and providing for its transportation? Such is not the law as we understand it.[4]

It is contended on behalf of the carrier that there was no evidence to show that it knew that its agent at Shanghai was inhibited by the British Government from shipping the goods of the plaintiff in time to have employed an agent not under such disability. Whether or not the carrier knew of the inhibition at all, or was apprised of it in time to have employed another agent, the fact remains that the agent it did appoint, acting within the scope of his employment, deprived the plaintiff of his legal right. For that wrong we think the carrier was properly adjudged liable, even assuming that it was ignorant of its agent's disability.[5] The judgment is affirmed.

C. S. L.

JAPAN.

The most important development of the law of Japan during the past year, which is not only of interest, but of very great importance to foreigners especially, has been the interpretation by expert opinion and judicial decision of that part of the Japanese law entitled "The Law Concerning the Application of Laws in General."

This particular statute enacted in 1898, as its title implies, provides when and to what extent the Japanese courts will apply the law of a foreign country. It provides that the acts of foreigners resident in Japan are in some instances to be governed by the law of the foreigners' nationality. This does not, however, embody any idea of extraterritoriality, for in that case foreign law is applied within a country by treaty while by this statute, according to the Japanese law itself, the law which the Japanese courts shall apply in certain instances is not the domestic law of Japan, but that of another country. The act provides that the law of the foreigners' nationality is to govern

[4] See, Richards & Co., Inc., *vs.* Wrechsner, 156 N. Y. Supp. 1054, and the numerous cases there cited.

[5] See, Chesapeake & Ohio R. Co. *vs.* Francisco, 149 Ky. 307.

when questions arise such as capacity, condition of the formation of a marriage and the effect thereof, marital property, divorce, legitimacy, adoption, relation of parent and child, guardianship, succession, formation and effect of a will.

Japanese society is, to a great extent, founded upon a family system which is peculiar to that country. The customs and relations growing out of the family form a part of the Japanese law which would be very inconvenient to apply to foreigners resident in Japan, consequently the adoption of the foregoing provisions as to the application of the law of the nationality. Ever since the enactment of the statute under consideration, until the past year, the Japanese courts have, when the rights of foreigners are under consideration and the subject-matter before the courts of the nature as above indicated, applied the law of the nationality of a foreigner, but the apparent tendency of the Japanese courts now is to apply to foreigners, especially Americans and English whose domicile is established as being in Japan, not the law of the nationality, but the law of Japan.

Art. 29 of the Law Concerning the Application of Laws in General provides as follows:

"In case the law of the home country of the party is to be followed, if Japanese law is to govern according to the law of such country, the Japanese law shall then govern."

The theory adopted by the courts before which the question has arisen, which theory is supported by expert opinion, is that when according to the law of the nationality the law which is to govern is the law of the domicile, which domicile being established in Japan, the Japanese law, according to Art. 29, is to be applied. In other words there is a reference by the Japanese law to that of the nationality, which in turn again refers the question to the law of the domicile, which is the Japanese law.

The doctrine of Renvoi, here involved, has been much discussed, both by English and Continental scholars, but its introduction into Japan as a practical proposition has happened only recently.

The District Court of Yokohama has decided within the past few months that a document left by a citizen of the State of Michigan, who was apparently domiciled in Japan, is to be governed by the law of Japan, and not that of Michigan, so that

while the document is a will, according to the law of Michigan, and is revoked by a subsequent will, nevertheless by Japanese law it is a valid *donatio mortis causa*. This principle is also under consideration in several other cases now pending, the matters in controversy being, divorce, marital property and guardianship, and the expert opinion given in these cases seems favorable to the adoption of this principle.

An understanding of the wide differences between the Japanese law and that of England and America on such matters as are set forth in the foregoing statute cannot but lead one to the realization of the practical difficulties in store for foreigners domiciled in Japan should the highest court of Japan affirm the principle as to the application of law which the lower courts have apparently accepted.

It is also reported that the present session of the Imperial Japanese Diet is intending to enact a law by which foreigners will be permitted to own land in that country. A similar law was enacted several years ago but was never promulgated and consequently never came into force. Apparently there were some practical defects in that law, but the new one which is now being drafted prior to introduction into the Diet is said to be very liberal and upon its passage and promulgation foreigners in Japan will be permitted for the first time to own land in that country.

J. L. K.

PHILIPPINES.

Alien Land Law.—The act passed by the legislature in 1918, prohibiting aliens from owning land in the islands, and which failed to receive the approval of the President, has been recalled and, it is understood, is held in abeyance for the present.

Large School Appropriation.—One of the last official acts of Governor-General Harrison, who left the Philippines early in December, was to sign a bill which appropriated P30,000,000 ($15,000,000) for public schools. This is by far the largest single appropriation for schools in the history of the archipelago and is a fitting sequel to the facts that Act No. 3, passed by the

Philippine Commission, September 12, 1900, was an appropriation for the services of the first American superintendent of public instruction in the Philippines and that the first act of the full Philippine legislature after the organization of the Assembly was one appropriating P1,000,000 ($500,000) for *barrio* (rural) schools. The public school system of the Philippines is the finest flower of the American régime and it is gratifying to note the substantial mark of appreciation by the Filipinos themselves in the last appropriation. It is planned now to bring more American teachers to the Philippines and it is hoped that a steady improvement of the schools and a corresponding decrease of illiteracy will result.

In this connection the recent session of the East China Educational Association at Shanghai is interesting as the outgrowth of a movement to promote western, and especially American, educational methods and institutions in China, and its relation to this department is found in the fact that the promoters of the movement are looking more and more to the American educational experiment in the Philippines as their guide and model. Among the resolutions adopted by the Association was one emphasizing the importance of agricultural education in China.

Deportation of Aliens (*In re* Dick, 16 Official Gazette, 780).—The Federal Supreme Court has denied the application for a writ of *certiorari* in this case and the right of the Governor-General to deport aliens from the Philippines may now be regarded as established. The petitioner, an alien editor, had been ordered deported by Governor-General Harrison for publishing matter reflecting upon the Philippine National Guard. He sought a writ of *habeas corpus* from the Philippine Supreme Court, which was denied by a bare majority (five to four). But, though denying the writ and thus affirming the Governor-General's power to deport, the majority granted a tsay of the executive's order upon the petitioner's giving a bond. The majority opinion was written by Carson J. who expressed himself as

"of opinion that in the Philippine Islands the doctrine which should be established is that the power to exclude or expel aliens is vested in the political department of the government, to be regulated by treaty, or Act of Congress of the United States, or by

act of the Philippine legislature; and, under the laws as they now stand on the statute books, to be executed by the Governor-General, the supreme executive authority, according to such regulations. . . . .

"It has been suggested that the power to deport aliens as an act of state, which was undoubtedly included among the powers which the military governor was authorized to exercise after the occupation of the islands by the armed forces of the United States, should not be held to have vested in the first civil governor and his successors in office by virtue of the executive orders of the President, the Spooner Amendment and the various acts of Congress organizing the Philippine Government, because it would be unreasonable to suppose that it was the intention of Congress to provide for the transfer of purely military powers to a civil executive; and because in no event would powers which had their origin wholly in military necessity survive the complete disappearance of the military situation creating the necessity. But these contentions are manifestly based on the erroneous premise that the power to deport aliens as an act of state, which was exercised by the commander-in-chief of the military forces in occupied territory, was necessarily a purely military power similar in kind and origin to the power, for example, which he exercised to deport natives of the islands or citizens of the United States.

"We readily agree that it would be unreasonable to suppose that the power to deport any person whatever, whether a citizen of the United States or not, whose presence appeared to constitute an obstacle in the path of the military forces of the United States in the Philippines, was transmitted from the military governor to the civil governor and his successors in office through a period of nearly two decades of profound peace. But the power to deport aliens is not derived exclusively or necessarily from military necessity. Indeed, its exercise is in many, if not in most, instances, a function of the civil and political department of the government, properly vested in the civil authorities in time of war as in time of peace, unless taken over by the military commander by the assumption of civil as well as military powers in territory under his command."

But this view was expressly rejected by the minority, one of whom wrote:

"The idea is that the military governor had the right to deport aliens, but that *in his hands it was an essentially civil power.* Being a civil power, it was naturally inherited by the civil governor, who succeeded, or superseded, the military governor; and it therefore passed ultimately to the Governor-General. (Be it observed that if it had been admitted that it was a

military power, it could not have been urged that the civil governor had inherited it.) Subtleties such as these awaken no response in the consciousness. If the military governor had wanted to deport an alien of course he would have done it; but in doing so he would have been acting under the authority of the President of the United States as Commander-in-Chief of the American Army. Something has been said of the Spooner Amendment of March 2, 1901. Anybody who reads it with a detached mind will see that it was a purely transitory provision and that it speaks of the past. There never was, of course, any Presidential order or statute of any sort, created by American authority, which expressly gave the power to deport anybody."

Another declared:

"No law has directly conferred this power on the Governor-General or authorized the President to assign it to the chief executive. To exist, the power must be considered as a legacy from the military governor. But it does not impress one as reasonable that the power to deport aliens was transmitted from the military governor to the civil governor; or if this be resisted, that the power arising because of war existed subsequent to the Spooner Amendment after Congress had 'otherwise provided' in different organic laws reconstituting the government. It would appear preposterous to suppose that a war power free from constitutional limitations would subsist for nearly 20 years after peace has been declared and notwithstanding two or more organic laws reorganizing the civil government."

Much of the discussion turned upon the effect of the earlier decision of the court in Forbes *vs.* Tiaco, 16 Philippine 534. This was an original proceeding in the Supreme Court by W. Cameron Forbes, then Governor-General, for a writ of prohibition against a judge of the Court of First Instance to prevent him from taking or exercising jurisdiction of an action for damages pending before him, the complaint in which alleged:

"Second. That the said plaintiff herein is a Chinese person who is and has been a resident of the Philippine Islands for the last 29 years, he having duly established his right to be and remain in the Philippine Islands since the American occupation thereof in accordance with law.

"Third. That the said plaintiff herein, during his residence in these islands, has acquired and is actually the owner, or part owner, of property and business interests and enterprises of great value within the Philippine Islands, and that the said property and business interests and enterprises require the personal pres-

ence of the plaintiff herein in the Philippine Islands for the proper management and supervision and preservation thereof.

"Fourth. That the said plaintiff has a family in the Philippine Islands and that said family is dependent upon said plaintiff for support and that it is impossible for the said plaintiff to give the said family that support unless he, the said plaintiff, is actually present within the Philippine Islands.

"Fifth. That on or about the 19th day of August, 1909, the defendants herein, Charles R. Trowbridge and J. E. Harding, unlawfully and fraudulently conspiring and conniving with the other defendant herein, the said W. Cameron Forbes, and acting under the direction of the said defendant, W. Cameron Forbes, did unlawfully seize and carry on board the steamer "Yuensang" the said plaintiff herein with the intent by said force to unlawfully deport and expel the said plaintiff herein from the Philippine Islands against the will of the said plaintiff herein."

The writ of prohibition was granted on May 24, 1910, by Grant Trent, associate justice of the Supreme Court, who, in a few weeks before, had been appointed such at the instance of the plaintiff, Governor Forbes. On a hearing before the court the order was made perpetual, only five of the seven justices participating in the decision and only two concurring in the conclusion of Johnson, J.:

"That the Governor-General, acting in his political and executive capacity, is invested with plenary power to deport obnoxious aliens whose continued presence in the territory is found by him to be injurious to the public interest, and in the absence of express and prescribed rules as to the method of deporting or expelling them, he may use such methods as his official judgment and good conscience may dictate."

This conclusion was announced in an opinion which concurred with the majority, but some judge, who dissented in the Dick case, held in the latter:

"That, even as the civil government was then organized, the Governor-General as such did not possess in himself alone the power or authority to deport aliens without authority expressly granted or ratified, either by the legislature of the Philippine Islands or by an act of Congress of the United States; *that if the power did exist then it was by virtue of the combined powers of* the *executive legislative departments* of the government. . . . .

"That there is no law now nor legal authority existing in any person or department of the Philippine Government, nor in any combination of such power or authority, to deport the petitioner under the admitted facts as they appear of record."

Exactly eight months after the original deportation of the Chinese by Governor Forbes, and about three weeks after the commencement of the action already mentioned by the former against the latter, he secured the passage by the Philippine legislature, at a special session called for that purpose, of a law by which his action therein purported to be "approved, ratified and confirmed and in all respects declared legal and *not subject to question or review.*" On the strength of this act alone the Federal Supreme Court affirmed the judgment of the Philippine Court in granting a writ of prohibition (which, however, was expressly not declared to be the proper remedy) against the judge who had taken jurisdiction of the deportee's action for damages.

The opinion in the case last referred to (Chuoco Tiaco *vs.* Forbes, 228 U. S. 549, 57 Lawy. ed. 960), was written by Holmes, J., who said:

"The first doubt that naturally would occur is whether, if a right of action had vested previously, it could be taken away by such a statute. But it generally is recognized that in cases like the present, where the act originally purports to be done in the name and by the authority of the state, a defect in that authority may be cured by the subsequent adoption of the act. The person who has assumed to represent the will and person of the superior power is given the benefit of the representation if it turns out that his assumption was correct. . . . .

"It is held in England that an act of state is a matter not recognizable in any municipal court. Musgrave *vs.* Pulido, L. R. 5 App. Cas. 103, 108, 48 L. J. P. C. N. S. 20, 41 L. T. N. S. 629, 28 Week, Rep. 373. And that was the purport of the Philippine act declaring the deportation not subject to question or review. As the Bill of Rights did not stand in the way, and the implied powers of the government sanctioned by Congress permitted it, there is no reason why the statute should not have full effect. It protected the subordinates as well as the Governor-General, and took jurisdiction from the court that attempted to try the case.

"Whether prohibition is technically the proper remedy, historically speaking, we need not inquire. In such a matter we should not interfere with local practice except for good cause shown. In substance the decision of the Supreme Court was right."

The majority opinion in the Dick case recites that "two years later, evidently as the outcome of the discussion of the Chuoco Tiaco deportation proceedings, the general subject of deportation and repatriation of foreigners was dealt with by the Philippine

legislature in " a statute which required a hearing and time for preparation therefor, as a condition precedent to deportation. Long afterward that statute was treated by the Philippine Supreme Court as affording sufficient authority for the Governor-General to deport aliens. (Chan Yick San, 31 Philippine 560.) But the doctrine was later repudiated by a minority of the court.

" It is not improbable," observes Street, J.," " that the justices who concurred in the opinion in the Chan Yick San case were then of the opinion that the Governor-General had authority under Act No. 2113 to deport the petitioner and regarded the proceedings of which complaint was made as a proper preliminary to the exercise of that power; but nothing actually stated in the opinion expresses that belief. Certainly we do not regard a mere inference as to the existence of such a power to be binding upon this court as a precedent in a matter of such vital importance."

In this case Johnson, J., who wrote the opinion in Chan Yick San, 31 Philippine 560, does not refer to it but says: " An examination of said section (69) discloses the fact that it pro- authorizing the Governor-General to deport " the subject of a foreign power."

In 1918 the Philippine legislature enacted another statute authorizing the Governor-General to deport " the subject of a neutral, foreign nation " after conviction of publishing matter tending to obstruct the government " in the prosecution of the present war." It has been urged that this act, on the principle *expressio unius exclusio alterius* impliedly forbade such deportation of other aliens. This contention was rejected by the majority of said court though accepted by the minority.

" Whatever may have been the reasons which controlled the action of the legislature in this regard, says the majority opinion, we find no conflict between the provisions of Act No. 2757, looking to the summary deportation of convict subjects of neutral foreign nations, and the provisions of Section 69 of the code conferring a regulated authority upon the Governor-General to deport aliens as an act of state, upon investigation conducted in the manner and form prescribed in that section. Certainly, the act does not *deprive* the Governor-General of any power he may have had, prior to its enactment, to deport aliens other than those mentioned therein."

The decision of the Federal Supreme Court, therefore, ends a long controversy and seems to confirm in the Philippine

executive a far-reaching prerogative which only legislation may remove.

In this instance, however, the exercise of the prerogative has been tempered with mercy; for after Governor-General Harrison had sailed on his homeward voyage he cabled back revoking the order of deportation. Meanwhile his successor, Acting Governor Yeater, had done the same and the offending editor's residential status remains undisturbed after having acquired an unusual stock of new experience besides furnishing material for an extensive legal inquiry.

C. S. L.

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